CHAPTER III.

THE DIFFERENT SORTS OF ROADS IN NEW ZEALAND.

Technically speaking, roads outside cities or boroughs are divided in New Zealand into four classes, viz.:— Roads divided into four classes.

1. Government Roads.
2. Country Roads.
3. District Roads.
4. Private Roads.

And the rights and liabilities of local bodies and the public differ in the case of each class.

The Governor-in-Council has the power, under Section 103 of "The Public Works Act, 1905," to declare any road outside a Borough to be a Government, County, or District Road, or to alter and change any road from one class to another from time to time as often as occasion shall require. The operation of this provision has far-reaching consequences, as it shifts the burden of the maintenance, and the right of control, of the road from one local body to another, or it may relieve a local body of such burden altogether. Powers of Governor to declare Road to be County or District Road, etc.

I.—GOVERNMENT ROADS.

A Government Road, strictly speaking, is a road which has been declared to be such by the Governor-in-Council, and the fact that the road is being or has been constructed or repaired by the Government does not by reason of such construction or repair make it a Government Road, if at the time of such construction or repair it was a County or District Road (see Sub-sections 1 and 2 of Section 103 of "The Public Works Act, 1905"). This is an important point, because many local bodies erroneously imagine that because the Government may take in hand the construction, repair, or Definition of Government Road.

maintenance of a road, or may spend money thereon, that therefore such local body is relieved from responsibility, or that it gives it a right to require the Government to put the road in certain definite repair, or to complete the construction before handing it over to the local body to complete or maintain. This view appears to be entirely incorrect.

Roads in outlying districts are Government Roads.

All roads in an outlying district, where "The Counties Act, 1886," is not in force, are Government Roads by virtue of Sub-section (b) of Section 105 of "The Public Works Act, 1905." An outlying district is a district where there is no Road Board, as in West Taupo or Fiord Counties, but when and so soon as "The Counties Act, 1886," is brought into operation in any such county, or a Road Board is set up in the district, the roads will cease to be Government Roads, and will then become "County" or "District" Roads without further process.

Government Roads gazetted.

The roads that have been declared to be and are Government Roads can be gathered from a perusal of the Indices to the *New Zealand Gazette* from 1876 to the present year, inclusive; and, as to those in outlying districts, it can be easily ascertained by reference to the lists of Counties and Road Districts in pages 11 to 18 of "Curnin's Index to the Laws of New Zealand," 15th edition, 1907, whether the district in which any road is situated is or is not in a county where "The Counties Act, 1886," is in force. If it be found that the Act is not in force, and there is no Road Board exercising jurisdiction in the district, then any road therein may be considered to be a Government Road.

Certain roads on estates under Land for Settlements Act are Government Roads.

Roads on any estate subject to "The Lands for Settlements Consolidation Act, 1900," which were in existence and were public roads before the estate was purchased by the Crown follow the general law, but it is held that new roads laid off by the Crown on such estates subsequently to such purchase, are Government Roads, because they do not come strictly within the definition of "road" in Section 101 of "The Public Works Act, 1905"; and, this being so, that Act does not apply to them until they are declared by the Governor-in-Council to be District or County Roads under

Section 103 of such Act. It is customary, when the Government has spent all the money upon any given road that it intends to expend, for the Governor-in-Council to declare that such road is a County or District Road, but except in the case of new roads on estates under "The Land for Settlements Consolidation Act, 1900," this is not absolutely necessary, as the local body is already responsible by law. It is, however, done as a matter of precaution, and to ensure that no question may arise between a Road Board or County Council and the public as to whose duty it is to control and maintain the road.

Government Road may be vested in Borough.

A road in a borough which has been constructed or is controlled by the Crown is a "Government Road," but the Crown may divest itself of the road and vest it as a street in the Corporation of the Borough, under the provisions of Sub-section 4 of Section 103 of "The Public Works Act, 1905."

Road on Railway land is a Government Road.

A road on railway lands is a Government Road, unless it has been vested as a road or street in the local authority under the powers conferred by Section 197 of "The Public Works Act, 1905."

2.—COUNTY ROADS.

Definition.

A County Road is a road the control of which is vested in a County Council, even although the road may not have been formed or made, and such roads become vested in the Council in various ways, as follows:—

1. Any road declared to be a County Road by the Governor-in-Council in pursuance of Section 103 of "The Public Works Act, 1905," thereupon becomes a County Road.
2. The County Council may make County Roads throughout the County, and may take lands therefor, except within the limits of a borough, and by an Order publicly notified may declare any District Road within the County to be a County Road. (See Sections 104 and 108 of "The Public Works Act, 1905," and Section 32 of "The Town Districts Act, 1881," and Section

3 of "The Town Districts Act, 1906.") The County Council must exercise this power in a reasonable manner, for in the case of *Hendry v. Hutt County Council* (3, N.Z.L.R., C.A., 254), the Court of Appeal declared that an Order made by the County Council, declaring that all District Roads then existent and to be made within a Road District were County Roads, was bad, as not being a reasonable exercise of the discretion vested in the Council.

County Roads in Town Districts.

A County Road may, and frequently does, exist in a Town District, if such Town District contains less than 500 inhabitants; and the setting up of such a district in a county will not divest the County Council of the burden of maintaining any road in such Town District that may have been declared to be a County Road, but a County Council may authorise a Town Board to construct or repair, at its own cost, footpaths on any County Road in the Town District. It may also do the same in the case of a District Road under the control of a Road Board. (See Section 3 of "The Counties Act Amendment Act, 1904," and Section 3 of "The Town Districts Act, 1906.")

Roads in outlying districts.

3. All roads in an outlying district, or on the boundaries thereof, are County Roads by virtue of Section 105 of "The Public Works Act, 1905," if "The Counties Act, 1886," is in force in the County. An "outlying district" is one within which there is no Road Board, consequently if there be no Road Boards in such County, then all the roads in the County are County Roads unless they have been declared to be Government Roads; and, similarly, if there be Road Districts and out-lying districts in the same County, then all roads in the outlying districts are County Roads. It is to be observed from the enactment just quoted that if there be Road Districts as well as one or more outlying districts in the same County, all boundary roads between such road and outlying districts are County Roads.

4. Section 245 of "The Counties Act, 1886," provides that "all lines of roads or tracks passing through or over any Crown lands or native lands, and generally used without obstruction as roads, shall, for the purposes of that section be deemed to be public roads under the control of the County Council in whose district they may be situated, notwithstanding that such lines of roads have not been surveyed, laid off, or dedicated in any special manner to public use." This is a peculiar enactment, and no similar provision exists in any other Act, whereby such roads are deemed to be "Public Roads," and as they are not apparently Public Roads within the meaning of "The Public Works Act, 1905," they are public roads in a restricted sense only. In view, also, of the strange wording of the section (*viz.*, "for the purpose of this section"), it would appear that they are not "County Roads" unless they are declared to be such, and to make them County Roads they must be made so in some of the ways prescribed by "The Public Works Act, 1905," and it would appear that the only method prescribed therein that fits this case is the one in Section 104 of the Act, whereby the County Council may declare the road to be a County Road. **Roads or Tracks on Crown or Native Lands.**

5. Section 246 of "The Counties Act, 1886," states that roads declared to be Main Roads under the provisions of the schedules to "The Roads and Bridges Construction Act, 1882," which have been under the control of the County up to the time of the coming into force of "The Counties Act, 1886," shall, from the repeal of "The Roads and Bridges Construction Act, 1882," be deemed to have been County Roads within the meaning of Section 81 of "The Public Works Act, 1882." This appears to mean that even though any road mentioned in the schedule to "The Roads and Bridges Construction Act, **Main Roads under Roads and Bridges Construction Act.**

1882," may not have been formally declared to be a Country Road, still, if the County Council had control of it on the coming into force of "The Counties Act, 1886," such road is a County Road unless, since 1886, it has been declared to be a Government or District Road by process of law. "The Roads and Bridges Construction Act" was repealed on 22nd September, 1885, and "The Counties Act, 1886," came into operation on 1st January, 1887. What, therefore, is a County Road under the above-mentioned enactment must be decided from the facts of the case—firstly, by ascertaining if the road is included in the schedule to "The Roads and Bridges Construction Act, 1882" (including its amendments), and, secondly, by ascertaining if the County Council had control of the road on 1st January, 1887.

Present position of such roads.

This is an important and far-reaching provision, although it is not generally recognised as such by local bodies. It has an especial bearing in the case of Counties where "The Counties Act, 1886," is in force, and where Road Boards may not have been in existence on 1st January, 1887, but have been set up since that date. In the usual course, when a Road District is constituted, the control and management of all roads in such district *ipso facto* become District Roads, and vest in the Road Board, save and except those that the County or the Governor-in-Council may have specially declared to be County or Government Roads. If, therefore, the Road District has been constituted since 1st January, 1887, and there are any roads in such district whose names appear in the schedule to "The Roads and Bridges Construction Act, 1882," and its amendments, and such roads were County Roads at the time they were made Main Roads under that Act, it would seem probable that they are still County Roads, and that the County Council is responsible for their control and maintenance, unless they have been declared by the County Council to be District Roads with the consent of the Road Board.

The roads that were declared to be "Main Roads" for the purpose of "The Roads and Bridges Construction Act, 1882," were declared as such by resolution of the House of Representatives on 11th September, 1882; on 30th October, 1884, also by Section 5 of "The Roads and Bridges Construction Act Amendment Act, 1883"; and by Section 6 of "The Special Powers and Contracts Act, 1884." The names of the roads will be found if the appendices to the Journals of the House of Representatives for the periods mentioned are turned up, and by referring to the Acts quoted, and to notices dated 25th and 31st March, 1885," published in the *New Zealand Gazette* of that year. Where particulars of such roads may be obtained.

3.—DISTRICT ROADS.

A District Road is a road in a Road District that has not been declared to be a Government or County Road, and all District Roads are under the control respectively of the Road or Town Board exercising control in the district in which they are situated. (See Section 106 of "The Public Works Act, 1894," and Section 33 of "The Town Districts Act, 1881.") Definition.

There can be no District Roads save and except in a district where a Road or Town Board is constituted and exercises jurisdiction. If there be no Road or Town Board in the district, then any roads in the same are either Government or County Roads, as already explained under those headings. No District Road except in a Road or Town District.

There may, however, be County or Government Roads, or both, as well as District Roads, within the limits of a Road or Town District, and the question sometimes arises as to whether a certain road is a Government, County, or District Road. County, Government and District Roads may exist in a Road District.

A road cannot be a Government Road unless it has been declared to be such by the Governor-in-Council under the provisions of Section 103 of "The Public Works Act, 1905," or unless it falls under the category of a Government Road for some other reason, as already explained in the part of this chapter that deals with Government Roads. What constitutes a Government Road.

What constitutes a County Road.

Similarly, a road cannot be a Country Road unless it has been declared by the Governor-in-Council to be such under the section just quoted, or it has been declared to be a County Road by the County Council under Section 104 of the Act; or unless the road comes within the definition of a County Road as already explained in dealing with County Roads.

What constitutes a District Road.

If a Public Road in a Road or Town District is not a Government or County Road, it must be a district Road for the following reasons, *viz.*:—

(*a*) Section 101 of "The Public Works Act, 1905," defines what constitutes a Public Road.

(*b*) "The Public Works Act, 1905," only speaks of two classes of roads besides District Roads, *viz.*, Government and County Roads, and it defines what these roads are, and Section 107 of the Act states "That all roads, except as herein otherwise provided, shall be under the control of, and may be constructed and repaired by the Road Board of the district in which such roads are, and shall be called District Roads"; but it should be remembered that the general law as to Town District Roads is to be found in "The Town Districts Act, 1881," and not in "The Public Works Act, 1905."

District Road may be constituted County Road.

A County Council may, as already stated, declare a District Road to be a County Road, but it has no power to declare a County Road to be a District Road against the wishes of the Road Board or its ratepayers.

Differences between Counties and Public Works Acts as to County Roads.

The provisions of "The Counties Act, 1886," and "The Public Works Act, 1905," seem at first sight to be at variance with each other on this subject. Section 247 of "The Counties Act, 1886," says that "On petition of not less than three-fifths of the ratepayers of any riding or ridings in a County, praying the County Council to declare any County Road to be a District Road, the Council shall declare by Special Order such County Road to be a District

Road," &c.; but Section 104 of "The Public Works Act, 1905," declares that a County Council may, by an Order publicly notified, and with the consent of the Road Board within whose district the same shall lie, declare any portion of any County Road to be a District Road.

Question as to whether or not both Acts are operative.

It will be seen from this that in one case a petition of ratepayers, and in the other the consent of the Road Board is required; and the question, therefore, arises as to whether both conditions are operative, and must be observed in any case before a County Road can be declared to be a District Road by the County Council, or whether the Public Works Act overrides the Counties Act.

Separate rights probably given by each Act.

The matter is not free from doubt, as the Public Works Act, being the later enactment, should, under the principles that guide the interpretation of statutes, prevail; but it will be seen that, while Section 104 of the Public Works Act is merely permissive, Section 247 of the Counties Act is imperative, and as the applicants in one case are the ratepayers, and in the other case the County Council, it would appear that the intention of the Legislature is to give separate rights to each.

Procedure in both cases.

Thus, if the ratepayers appeal to the County Council, it would seem that the Council can proceed under Section 247 of "The Counties Act, 1886," but if the initiative comes from the County Council, with or without suggestion from the Road Board, then the matter must be dealt with under Section 104 of "The Public Works Act, 1905." It may be, however, that where there is a Road District, the Legislature intended that both the Road Board and the ratepayers should consent.

4.—PRIVATE ROADS.

Two sorts of Private Roads.

There are two sorts of Private Roads in New Zealand, Private Roads pure and simple, and Private Roads authorised by statute. There are also "ways of necessity" that are in the nature of Private Roads.

(a) PRIVATE ROADS PURE AND SIMPLE.

Definition.

A Private Road pure and simple is a road on private land intended to be used as such by the owner of the land, or his assigns, for his or their own purposes, and is not intended for use by other persons or by the general public; and, so long as the owner limits the use accordingly, the road will not become a public road, neither will the public or any other person acquire any rights over the same.

Private Road may become Public Road in certain cases by user.

If, however, the land be not under the Land Transfer Act, and if he allows any person or persons, or the public, to use it as a road for twenty years, without hindrance or opposition on his part, he may afterwards find that an easement has been thereby acquired over the land by such other persons, or that the public may have then acquired a right-of-way over the land, which he cannot prevent. If an owner of land, whether under the Land Transfer Act or otherwise, has done anything which amounts to dedication, such as to allow public funds to be spent on such road by the Government or local body without claim to compensation or protest on his part, or he fences the road off in such a manner as to throw it open to the public, he may find that his title to the land on which the road exists has been taken from him and vested in the Crown without compensation, either under the common law or under the powers conferred by Section 101 of "The Public Works Act, 1905." Prior to "The Public Works Act, 1900," it was not necessary to formally dedicate a road in writing. The action of the owner might be assumed as evidence of dedication, for "once a highway always a highway," and in such a case the fact that the road is not shown on the certificate of title under the Land Transfer Act is no security to the owner that the road does not exist, if in fact what has been done amounts to dedication. See also remarks on this subject in Chapter II.

Method by which this can be prevented.

An owner can, however, easily prevent his land becoming subject to any of these disabilities by permanently or occasionally denying the right of people to use his land as a road or way of access. This can be done in many ways, such as by temporarily erecting a barricade from time to

time across the road, or by occasionally refusing to allow persons to pass through his land, or by putting up a notice in a prominent place on the road warning the public that there is no road, or in any other way that can afterwards be easily proved, and that will show that he has not granted or acquiesced in any permanent use of the road by any persons or the public. A landowner is, however, not safe in allowing public money to be spent on his private road, without protest or claim on his part, unless such money is spent under some agreement with the Government or local body by which his rights are protected, and such agreement should be in writing and stamped. It sometimes happens that a landowner does not wish to disoblige neighbours by refusing to allow them to use a short cut over his land, and in such case, if he does not care to stop their use, from time to time, as already advised, he should formally grant them permission for a definite time, or else he should enter into some agreement with them in such terms as will protect his own rights, and in such a manner as can be easily proved, otherwise such neighbours, or their assigns, may perhaps afterwards claim and establish as a right that which was only intended at first as a temporary concession or a friendly act.

Road shown on private plans of subdivisions of land.

Another sort of Private Road arises in cases where a land owner has cut up his land into allotments and has laid off a road or roads giving access to such allotments, and has sold or leased the same, and where in doing so he has either shown such road or roads on the lease, conveyance, or transfer of the land, or else has deposited a plan of the subdivision showing the road or roads in the Land Transfer or Deeds Registration Office, and has done nothing more which can be construed as a dedication of such roads to the public. In such a case the fee simple of the road will remain in the owner of the land even after he may have leased or sold all the allotments, and, strictly, the only persons who have a right to use these roads are the persons who may have purchased or leased any of the allotments, and their assigns. Of course, if the owner allows the Government or local authority to spend public money on the formation or improvement of the roads without protest on his part, such roads can be made public roads under Section 101 of "The

Public Works Act, 1905," without payment of compensation, or his action may be taken as evidence of dedication to the public.

Purchaser of any subdivision has a right to use all roads shown on subdivisional plan.

If there be several roads on the subdivisional plan, and only one or a few allotments are sold, each purchaser or lessee has a right to the use of all the roads shown on such subdivision, and the owner cannot close the same against such persons or their assigns. (See Section 173 of "The Land Transfer Act, 1885," and also *Churton v. Walker and another*, 15, N.Z.L.R., 601; and *Baird v. Jackson and others*, 2, N.Z.L.R., C.A., 271.)

Power of owner to close such roads.

If, however, the owner has done nothing from which dedication can be assumed, and he has not sold or leased any of the allotments, or, even if he has sold or leased the land, but has subsequently repurchased the same, or if he and all other parties having an interest in the land so agree, he can in either case, apparently, close up the roads without further process, and make whatever new subdivision of the land he thinks fit, and dispose of same in part or as a whole without binding the purchaser to open the roads.

Roads to subdivisions of land must now be dedicated as Public Roads.

This, however, is not the case in respect to subdivisions of land for sale or lease made subsequently to the date of the passing of "The Public Works Act, 1900" (*viz.*, 20th October, 1900), because Section 20 of that Act provides that "in every case where the owner of land subdivides the same into allotments for the purpose of disposing of the same for sale or lease for fourteen years, it shall be his duty to provide that each allotment has a frontage to a public road or street, and that if it does not possess such frontage, he must, by an instrument in his hand registered in the office of the District Land Registrar or Registrar of Deeds, irrevocably dedicate as a public road or street a strip of land sixty-six feet wide, to give access to such allotment. Section 20 of "The Public Works Act, 1900," was repealed by Section 2 of "The Public Works Act, 1903," as amended by Section 5 of "The Public Works Act, 1904," which make similar provisions. These enactments are, however, now included in Section 116 of "The Public Works Act, 1905."

Private Roads that are such by virtue of statutory enactments consist of certain roads—(*a*) on railway lands, (*b*) on native lands, (*c*) roads for the purpose of conveying timber over private lands, and (d) ways of necessity.

Private Roads under statutory enactments.

(*a*) PRIVATE ROADS ON RAILWAY LANDS.

Section 193 of "The Public Works Act, 1905," provides that "In cases where the making of a railway line has cut off all access by road to land other than Crown land, the Government shall make such crossing or crossings as may be necessary to give access to such land, but not more than one crossing shall be demanded in respect to each property unless the frontage of such property to the railway exceeds one mile in length, in which case one crossing shall, on the application of the owner, be given for each mile of frontage, but no additional crossing or crossings need be given in the event of the land being or having been subdivided after the construction of the railway."

Private crossings on Railway Lands.

Sections 84 and 85 of the same Act provide that the Minister or the Compensation Court may grant in satisfaction or part satisfaction of compensation, any right-of-way over land taken for any public work, which, of course, includes also a railway.

Compensation Court may grant such rights.

Section 41 of "The Government Railways Act, 1900," also provides that the Minister of Railways may grant any right-of-way or passage over railway land, but such grant is subject to such conditions and payments of rent as the Minister shall think fit, and the grant is subject to revocation without compensation at any time when the service of the public requires it, and subject also to immediate revocation in case of the breach of any conditions under which such easement was granted.

Minister ditto.

In either of the cases above-mentioned the crossing, or right-of-way, is in the nature of a private road, although it does not affect the ownership of the land, or of its use for railways or other purposes by the Crown or local body, and such private road can, of course, only be used in such a way as not to interfere with the public work for which the land was taken.

Such roads are Private Roads.

(*b*) ROADS ON NATIVE LANDS, AND IN NATIVE TOWNSHIPS.

Power of Native Land Court to lay off Private Roads.

When the Native Land Court makes subdivisions of native lands for the purposes of partition or otherwise, it can, under the powers granted by Section 69 of "The Native Land Court Act, 1894," order that each of the parcels of land shall be subject to such rights of private road to other or others of such parts of subdivisions as it thinks fit, and the Court may make such an order, either at the time when the partition is made, or within five years from the date of same. These roads are not, however, public roads, and the title to the same does not vest in the Crown, but it remains in the native owners. This being so, such roads are not under the control of local bodies, as they are not Public Roads within the meaning of Section 101 of "The Public Works Act, 1905." In the case of native townships constituted under the provisions of "The Native and Maori Land Laws Amendment Act, 1902," the roads or streets therein are not Public Roads for all purposes, and they remain vested in the native owners of the land, and are, therefore, in a sense, Private Roads, although possibly this is not the intent and meaning of the Act. (See Section 10 of the Act, and also Section 22 of "The Maori Land Laws Amendment Act, 1903." It appears to be certain that a local authority other than the Maori Council has no jurisdiction over such roads, but it should, however, be distinctly borne in mind that the above remarks do not apply to native townships constituted under "The Native Townships Act, 1895," in which case the roads are Public Roads, and are vested in the Crown.

Roads in Native Townships.

Powers of Councils of Native Townships.

The above was the general law on the subject until the passing of "The Native Townships Local Government Act, 1905," and it is still the law in respect to native townships that have not been brought under the provisions of that Act. The Act can be applied both to townships constituted under "The Native Townships Act, 1895," or to those constituted under "The Native and Maori Land Laws Amendment Act, 1902." The Act provides for the setting up of a Town Council, in whom the control of the roads in the township is to be vested in like manner as streets in a borough; but

it would seem that this only gives surface rights in such roads to the Council the same as is the case with a Road Board, and does not affect the actual ownership of the subsoil of the land. The Council has, however, the power to borrow money and collect rates for roads, streets, drains, and other works, and it is empowered to make and maintain such roads, streets, etc.

(c) ROADS FOR THE PURPOSE OF CONVEYING TIMBER OVER PRIVATE LANDS.

Conditions under which such roads may be authorised.

Section 184 of "The Public Works Act, 1905," provides that any person owning timber or the right to cut timber upon any land from which there is no practicable means or way of removing the same to any railway, road, mine, or sawmill, except by crossing private lands, may, by proceedings under "The Justices of the Peace Act, 1882," summon the owner and occupier of the private lands to appear before a Stipendiary Magistrate and show cause why the applicant should not be authorised to construct a road or tramway over such lands for the purpose of removing the timber.

What the applicant must show.

In making such an application it is not necessary for the applicant to show that he is cut off from all the four places mentioned above, *viz.*, from railway, road, mine, or sawmill. It is sufficient for him to show that the way applied for is the only practicable way of removing the timber to the objective point. (See *McGregor v. William and others*, 7, Gaz. L.R., 363.)

Magistrate may grant the application.

On the hearing of the application the Magistrate may make such order as he thinks just, and if he decide that the road or tramway is to be constructed, his order must clearly set forth the route to be adopted, the land to be used, the rent or compensation to be paid, including fencing (if he think fencing is necessary), and the time within which the road or tramway is to be constructed, and for which the right to use the tramway is to last; but the term is not to exceed five years. When the order has been issued, it is in itself sufficient authority for the applicant to enter upon the land, and to construct, use, and maintain the road or tramway; and the order of the Magistrate may be registered

against the title to the land in the office of the Registrar of Deeds or District Land Registrar for the district, so as to bind all future purchasers or other persons obtaining any interest in the land. The owner, lessee, or occupier of the private land so used may in any Court of competent jurisdiction recover from the applicant any rent or compensation payable to him under the Magistrate's order, or compel him to observe any condition imposed upon him by the order.

(*d*) WAYS OF NECESSITY.

Definition.

A way of necessity is a right-of-way or passage over land which must be implied from the actions of the parties, or which follows as a necessity of the case.

How the right may arise.

In England if a person has a piece of land, which has a frontage to a public road, and he sells a portion of such land without making any provision for road access to the same, the purchaser, failing any agreement or covenant to the contrary, can cross over the other portion of the land to the public road, and such a right-of-way is called a "Way of Necessity," and the original owner cannot prevent the purchaser using it. This principle of law is in force in New Zealand, and it applies even in the case of a Crown Grant (see *Smith v. Christie and another*, 24, N.Z.L.R., 561; 7, Gaz. L.R., 369).

Conditions upon which the right may cease.

That case also decides that where there is an implied grant of a way of necessity to land, and other land is afterwards acquired by the grantee, which gives him other access from a road to the first-mentioned land, the way of necessity ceases, though the new way may not be as convenient as the previous one.

Case showing other conditions under which the right may arise.

As showing how a way of necessity may arise and become operative without its becoming a public road, the case of *Freer v. Holmes* is instructive (see 22, N.Z.L.R., 197). In that case Freer held a section of land from the Crown under occupation license issued under Sections 152 and 156 of "The Land Act, 1892." The actual area of these sections was 602 acres; but the license was for 580 acres only—the difference being intended to cover 22 acres reserved by the Crown for a road through the land. Holmes purchased from

the Crown two sections of land between which Freer's section was situated, and to one of Holmes' sections there was no other access than by going through Freer's land. The proposed road through Freer's land was never surveyed nor legalised under Sections 13 or 15 of "The Land Act, 1892," but its general direction was indicated by a curved line shown upon Freer's occupation license. Freer allowed Holmes to pass over his land when Holmes required to go to his section, and a gate was erected on the boundary, but owing to some disagreement between the parties, Freer removed the gate and put up a fence across the road, which Holmes removed, and he then resumed the use of the road, and litigation followed. The Supreme Court held that though there was no public road through Freer's land within the meaning of "The Land Act, 1892," yet Holmes was entitled to a way of necessity over Freer's land in order to obtain access to his property.

Road along river bank.

It has until recently been held, under the authority of *Pipi Te Ngaharu v. The Mercer Road Board*, 6, N.Z.L.R., 19, that if a river washes away the bank and destroys the road thereon, the public are entitled to a road over a corresponding portion of the adjoining land, and the local body having control over the road has a right to remove any fences that obstruct such road; but by the recent case of *Attorney-General and Southland County Council v. Miller* (9, G.L.R., 145), it appears that the public has no such right.

Right of road to land sold by Crown.

In cases where the Crown has sold land to which there is no road access, the purchaser can, if there be Crown land adjoining such land, cross over the Crown land to the nearest public road (see *Smith v. Christie and another*, 24, N.Z. L.R., 561; 7, Gaz. L.R., 369), but it sometimes happens that there is no Crown land adjoining, or the owner will not take the responsibility of opening up the road. In such a case Section 115 of "The Public Works Act, 1905," will apply. That section provides that where land has been purchased from the Crown to which there is no access other than by passing through the adjoining land, the owner of the purchased land may, if the adjoining land is the property of the Crown, serve on the Minister for Public Works a notice claiming

that a way of access to the nearest public road shall be laid off, and it is the duty of the Minister to comply with the request.

Procedure to obtain such a road.

If, however, the adjoining land is not the property of the Crown, the owner should apply to the local body to provide him with a road, and if the local body should refuse to do so, he can apply to the Minister for Public Works, and the Minister is empowered to provide the road on the following conditions:—

(*a*) The Minister is required to ascertain the cost of taking or acquiring the necessary land, and if the cost does not exceed one-fifth of the amount paid to the Crown for the land to which road access is to be provided, then the cost is to defrayed out of the Consolidated Fund.

(*b*) If the cost exceeds one-fifth of the sum paid to the Crown for the land, then the person applying for such road is to repay such excess to the Minister upon his demand, or to give security for such payment, before the land for the road is acquired.

(*c*) If part of the purchase money has been paid to the local body by the Government (as "thirds," etc.), then such local body is required to refund a proportionate share of the amount originally received by it on account of the land.