

CHAPTER XIII.

WIDTH OF ROADS AND STREETS IN RELATION TO THE SUBDIVISION OF LAND FRONTING THEREON.

GENERAL.

New roads must
be one chain
wide.

Save and in the case of main roads in towns, and in the case of streets in boroughs, the law does not directly require that a road or street shall be of any specified width; but, indirectly, the effect of Sections 116 and 117 of "The Public Works Act, 1905," is to compel the owners of land in subdividing their land, to make new roads or streets thereto one chain wide, and even to widen existing roads in some cases, that are less than one chain wide.

Requirements
of law.

Before dealing in detail with these provisions, which are of very great importance, and which have excited widespread interest among local bodies and the general public, it will tend to clearness if some explanation is first of all given of the requirements of the general law on the subject, apart from the special provisions of the Public Works Act referred to above.

Government
not bound by
the law.

The Government is not bound by any law in subdividing Crown lands for sale or lease to make the roads or streets giving access to such lands of any specified width, and the section of the Public Works Act referring to the matter cannot therefore be enforced against the Crown. As a matter of practice, however, the roads giving access to Crown Lands are usually laid off one chain wide, except in special cases, such as in townships, where the main street may be wider. In a few cases also of the subdivision of

land under the Lands for Settlement Act, owing to special circumstances, the roads are less than one chain wide. The Crown also is not bound to form or metal the roads or streets so laid out; and, although the Crown frequently does form such roads, and sometimes metals them, or makes grants of money for such purposes, the local authority cannot compel the Government to do so, or, in fact, to form or metal a road or street in any specified way whatever.

“The Municipal Corporations Act, 1900,” provides that a public or private street in a borough must be at least one chain wide, unless the configuration of the borough is such as to render it difficult or inexpedient that the street should be one chain wide, but it cannot be less than 40 feet wide, and there are drastic provisions imposing severe penalties on Borough Councillors for allowing streets to be laid off less than the authorised width (see Sections 228, 229, and 237 of “The Municipal Corporations Act, 1900”). The Act, however, allows rights-of-way and private ways to be constructed of a less width than one chain (Sections 210 and 211); and the law has very frequently been evaded by Borough Councils allowing what is really a street, and what is otherwise called a street, and intended for such, to be authorised as a “right-of-way” or “private way.” This authority has sometimes worked very badly for the parties interested in the land, because the Borough Council has afterwards declined, or has been unable to take over and maintain such streets or rights-of-way as “public streets,” and the difficulty which the Wellington City Council found in inducing Parliament to pass “The Wellington Streets Act, 1905,” to get over this difficulty, in respect to certain so-called streets, is a case in point. The greatest difficulty which arises in the case of these narrow streets comes when the owners of land fronting thereon seek to subdivide the same for sale; for they are then met by Sections 116 and 117 of “The Public Works Act, 1905,” which practically require chain-wide streets (except in special cases) before subdivision can be made. This difficulty is moreover not lessened in any way in so far as lands coming under Section 117 of the Act are concerned, even if the street has been legally authorised of a less width than one chain under

Street in borough must be one chain wide except under special circumstances.

Section 236 of "The Municipal Corporations Act, 1900," but the difficulty is removed if the land comes under Section 116 of "The Public Works Act, 1905."

Streets in town districts are under same law as streets in boroughs.

In the case of streets and roads in town districts, these follow the general law of streets in boroughs (see Sections 32, 33, 35, 36 and 33 of "The Town Districts Act, 1881," and Section 2 of "The Municipal Corporations Act, 1886," and *Tinwald Town Board v. Watkins*, 20, N.Z.L.R., 306).

County or Road Board not compelled to lay off road one chain wide.

A County Council or a Road Board is not compelled by law to lay off a road one chain wide, or any other specified width. It may lay off the road of any width it pleases, and if it can get a title to the land by conveyance, no power can interfere, even if the road is less than one chain wide. If, however, the title to the land required for such narrow road is to be obtained by proclamation under the Public Works Act, the application for the proclamation may be refused on the ground of public policy, unless very good reasons can be given for the existence of such narrow road. Each case is dealt with on its merits, and no general rule can be laid down.

County Council cannot, but Road Board can prohibit a road less than one chain wide.

There is nothing in "The Counties Act, 1886" (or its amendments) that gives a County Council authority to determine the width of roads in the county: but Section 156 of "The Road Boards Act, 1882," gives a Road Board power to prohibit the laying off of a road in its district unless such road shall be at least one chain wide.

Plans of towns and width of streets therein must be approved by Governor.

Section 18 of "The Land Act, 1892," requires that in every case where allotments or sections, or blocks of land are sold or advertised for sale as a town, the proposed name of the town, whether public or private, together with a plan of such town, showing the streets and the width thereof respectively, shall be prepared by an authorised surveyor, and be approved by the Governor prior to sale; and Section 17 of the Act provides that "in all towns which may be laid off, in or upon any Crown lands, or upon private lands outside a borough, the main streets shall be of a breadth not less than 99 feet, excepting only in the case of any existing town within or outside a borough having streets of a less breadth than 66 feet, with buildings bordering

both sides thereof, in which case the Governor may authorise the extension of the aforesaid streets at the existing breadth thereof. Provided, also, that in cases where towns have been laid out, and where the local authority had approved and formed any road or street of a less width than 66 feet, the in such case the Governor may in his discretion approve of such streets or roads"; but this will not prevent the operation of Section 117 of "The Public Works Act, 1905," from applying to such streets or roads.

Section 18 of "The Land Act, 1892," is modified by Section 2 of "The Towns Main Streets Act, 1902," which authorises the Minister of Lands under special circumstances to permit a main street to be 66 feet wide.

Power to restrict operations of Town Main Streets Act which requires main streets to be two chains wide.

When owners of land subdivided the same for sale, and in doing so found it necessary to lay off new roads or streets to give access to such lands, all that used generally to be done prior to "The Public Works Act, 1900," was for them to deposit in the Deeds Registry of Land Transfer Office of the district a plan of the land showing such roads and streets, and any person who bought any allotment shown on any such plan had a right to use all the roads shown thereon; but such roads did not become public roads in the full sense of the term unless the owner had done something else that amounted in law to a dedication of such roads to the public; and there was, moreover, no onus upon him to form or metal the roads so laid off.

Prior to 1900 owners in subdividing land not required to dedicate road.

The first enactment that really compelled an owner, in subdividing his land for sale, to dedicate and form, and in some cases to metal a new road one chain wide, which is required to give access to such subdivisions, is to be found in Section 20 of "The Public Works Act, 1900." Section 21 of that Act also provided (where the subdivision fronted on to a road less than one chain wide) that the owner must dedicate a strip of land sufficient to widen the road or street on that side to a width of 33 feet from the centre of the road. These sections caused much litigation, and the Supreme Court gave the following decisions.

"Public Works Act, 1900," compelled owner to dedicate.

In *Palmer v. District Land Registrar* (5, Gaz. L.R., 481; 23, N.Z.L.R., 1013), the Court held that where an owner of land fronting upon a street less than one chain

No subdivision of land sold without subdivisional plan.

wide had sold his land, piece by piece, without making any subdivisional plan, and had caused each piece to be surveyed off as sold, then there was no "subdivision of the land into allotments for the purpose of disposing of the same by way of sale" within the meaning of Sections 20 and 21 of "The Public Works Act, 1900."

If no new road required then no subdivision for purpose of sale.

In *Riddiford v. Mayor, etc., of Lower Hutt* (6, Gaz. L.R., 424; 24, N.Z.L.R., 54) it was decided that Section 21 of "The Public Works Act, 1900," had no application to land which was subdivided for the purposes of sale where such subdivision did not involve the formation of a new road or street.

Sale of part of an owners land is not a subdivision.

The Court of Appeal held in *Mayor, etc., of Wellington v. Francis and Overend* (21, N.Z.L.R., 394), that a sale by an owner of land of a proportion of his holding cannot be treated as a subdivision into allotments within the meaning of Section 20 of "The Public Works Act, 1900," where there is no evidence of a then present purpose of disposing of the remaining portion or any part of it, and this principle was acted upon in the latter case of *Gaulter v. District Land Registrar* (22, N.Z.L.R., 787).

Every road bounding a section of land is a frontage.

The Court of Appeal also decided in *Duncan and another v. Mayor, etc., of Lower Hutt* (22, N.Z.L.R., 798) that Section 21 of "The Public Works Act, 1900," applies to every frontage of an allotment to a public road or street, notwithstanding that in the case of any such allotment it may already have one frontage to an existing road or street 66 feet wide, or may have been provided with one frontage to a new public road 66 feet wide.

Law altered owing to its oppressive and unsatisfactory working.

Some of these decisions had the effect of nullifying the evident purpose of the enactment, and as the enactment was moreover unsatisfactory and oppressive in certain other particulars, and as it was found that the Act could be evaded in several ways, it was altered by Sections 2 and 3 of "The Public Works Act, 1903," and Section 5 of "The Public Works Amendment Act, 1904" (now Sections 116 and 117 of "The Public Works Act, 1905"). Section 116 deals with the case of subdivisions fronting on to an entirely new road, which is laid off for the purpose of subdivision.

Section 117 relates to the subdivision of land fronting on to an existing road of less width than one chain. One of the principal requirements of Section 116 is that where an owner of land sells any part thereof, which has no frontage to an existing road, street, or private street, he must provide and dedicate, as a public road or street, a strip of land not less than 66 feet wide, giving access to the part sold from some existing road, street, or private street. Present requirements.

There are four exceptions to this provision. The first of these exceptions is where, under Section 236 of "The Municipal Corporations Act, 1900," land is in a borough, and the configuration of the borough is such that within any certain specified area it is difficult or inexpedient to lay off the street of the full width of 66 feet. In such a case the Borough Council may apply to the Governor-in-Council for permission to lay off the street of a less width than 66 feet, but not less than 40 feet; and, if the application is granted, the lands in such areas are then exempt from the operation of Section 116 of "The Public Works Act, 1905." Exceptions to general law as to chain wide streets.

The second of these exceptions is that land may be sold to the owner of any adjoining land without any of the restrictions set forth in the Act. Sale to adjoining owner?

The third exception is that if the local authority is satisfied that the land is not intended to be used for the erection of a dwelling house thereon, and resolves that the enactment shall not apply, it will not then apply. Where dwelling house is not to be erected.

The fourth exception is that if the road or street is of a width of not less than 40 feet (reduced by Section 2 of "The Public Works Amendment Act, 1905," No. 10, to sixty links) and if a plan of the subdivision had been deposited in the Land Registry Office before 20th October, 1900 (the date of the passing of "The Public Works Act, 1900"), the Act will not apply. A liberal interpretation has been placed upon this last exemption by some Registrars. Thus where a sketch plan of subdivision was lodged before the date stated above, but the land itself had not then been surveyed, the lodging of the plan was held to be a sufficient compliance with the Act. Where plans had been deposited prior to 1900.

What should be done to obtain exemption.

Under the first and third of the above exceptions, if an owner desires to take advantage of them he must first of all approach the local authority, and ask for the necessary consent and assistance. If his case comes under the first exception he should, with such application, supply a sketch plan showing the position and width of the street, together with reasons in writing for his application, in order that the local authority may, if it favours the application, supply same to the Minister for Public Works when making application for the approval of the Governor-in-Council.

Owner must form and in some cases metal road or street.

Section 116 of "The Public Works Act, 1905," also provides that the owner must form the road or street dedicated by him, and if it is in a borough or town district, or is within the County of Selwyn, he must also metal it, or any portion thereof, if required so to do by the local authority, and to its satisfaction. The owner must also construct such drains and footpaths as may be agreed upon between himself and the local authority.

Dedication to be in writing.

The dedication of the road or street must be in writing, signed by the owner and registered by him in the office of the District Land Registrar or Registrar of Deeds for the district in which the land is situated. The effect of such dedication is to vest the fee simple of the land in the Borough Council for a public street, if it is situated in a borough, and to vest the fee simple of the land in all other cases (for a public road) in the King.

Dedication may be made after sale.

Where a road or street giving access to land being sold has to be "dedicated" in compliance with Section 2 of "The Public Works Act, 1903" (now Section 116 of "The Public Works Act, 1905"), it is sufficient compliance with the statute if the dedication and the registration of the instrument of dedication are made after sale and before the registration of the memorandum of transfer (see *The York Bay Land Co., Ltd., v. Barr*, 25, N.Z.L.R., 293).

Enforcement of Act.

The Act is enforced in a very simple and effective way, because it requires the Registrar to refuse to register any instrument affecting the land unless and until he is satisfied that the owner has complied with the Act (see Sub-section 4

of Section 116 of "The Public Works Act, 1905," and Sub-section 2 of Section 2 of "The Public Works Amendment Act, 1906").

The word "owner" in Sections 116 and 117 of the Act means the owner in fee simple, whether beneficially or as trustee, and includes a mortgagee acting in exercise of power of sale, the Public Trustee, and any local authority, board, or other authority, having power to dispose of land by way of sale or lease; and "sale" includes gift, exchange or other disposition affecting the fee simple and lease for any term, and lease for any term (including renewals) of not less than 14 years.

Definition of "owner."

Section 117 of the Act provides that where land, having a frontage to an existing road or street, of a less width than 66 feet, is subdivided into allotments for the purpose of sale, the owner shall set back the frontage of the land to a distance of at least 33 feet from the centre line of the road or street. He is also required to dedicate as a public road or street the strip of land between the frontage so set back and the frontage line as previously existing, and the land so dedicated is then to form part of such existing road or street. The owner is entitled to compensation by the local authority having control of the road or street, and in assessing such compensation the Compensation Court constituted for that purpose is required to take into consideration the necessity for, or advantage of, affording greater road or street space, the betterment accruing to the whole property so affected, and any such betterment is to be set off against the compensation claimed (see Section 4 of "The Public Works Act Amendment Act, 1906").

Owner subdividing land fronting narrow road or street is to set back his frontage.

Betterment.

There is one exception to the provisions of Section 117 of "The Public Works Act, 1905," and that exception arises in any case where the local authority having control of the road or street by resolution declares that the provisions of the section shall not apply to any specified road or street, or to any specified part thereof, and such resolution is approved by the Governor-in-Council. As a matter of practice it should be noted that an application for such

Power to exempt narrow road or street from these provisions.

approval should be addressed to the Minister for Public Works, and should be accompanied with a plan showing the extent and width of the road or street for which consent is required, and as consent is only given where there is a strong and *bona fide* case, the fullest reasons for the application should be given therein. Consent is moreover generally refused if it appear that the road or street is likely to become a main thoroughfare, or is likely to be much used. In the case of other roads or streets it is generally given if they are 40 feet wide, and the building line is set back 33 feet from the centre of such road or street.

Setting back the frontage on narrow roads or streets.

Section 117 also provides that where the frontage on either side of the road or street has already been set back, the centre line means the centre of the road or street as it originally existed. If an owner has to set back his frontage he is entitled to compensation by the local authority having control of the road or street, as already stated; but it would appear that this provision only applies to public roads or streets. If this be so, then the owner of land fronting on to a private road or street which is not under the control of a local authority is apparently not entitled to any compensation at all. The enactment casts no liability on the owner to form or metal the strip of land dedicated for widening the road or street, but the enactment applies to the strip of land the same provisions as exist in Section 117 of the Act, already explained, in so far as they concern the dedication of the land, and the power of the Registrar to refuse to register dealings if the Act is not complied with. The term "owner," in Section 117, has the same meaning as in Section 116 mentioned above.

Conditions upon which narrow roads or streets may be exempted.

In practice it very frequently happens that the Government is willing to obtain the issue of an Order-in-Council exempting a narrow road or street from the operation of Section 117, on condition that the building line is set back for 33 feet (or other suitable width) from the centre line of the road or street, and, where this is the case, and the local body consents thereto, the following provisions in Section 3, of "The Public Works Act Amendment Act, 1906," have effect, viz. :--

- 1A. The approval of the Governor-in-Council may be either absolute or subject to such conditions with respect to the building line as the Governor by Order-in-Council thinks fit to impose. Approval absolute or subject to conditions.
18. The resolution, with the approving Order-in-Council, is to be published in the *Gazette*, and thereupon the following provisions apply:—
- (a) The Minister is to transmit a copy of the *Gazette* to the District Land Registrar or Registrar of Deeds, as the case may require, who is required to deposit the same in his office and register against the title of all land affected thereby a memorandum under his hand that the land is exempted from this section either absolutely, or, as the case may be, subject to conditions as specified in the deposited *Gazette* (which shall be identified by its date and also by its deposit number, if any). Registration.
- (b) Such registration will then affect, with notice of the resolution and order, all persons then having any estate or interest in the land, and their successors in title. Registration affects interested persons with notice.
- (c) If any building is at any time erected in breach of any of the conditions imposed by such order, the person for whom the work is done is liable on conviction to a fine of not less than five pounds, nor more than fifty pounds, for every day during which such breach continue. Penalty.
- (d) In addition to all other remedies for the recovery of any such fine, the amount thereof, with costs, is by force of the Act a charge on the land, and such charge may be enforced by a sale of the land, and in such manner and on such terms as the Minister directs. Fine a charge on the land.

Application of
proceeds of sale.

- (e) The proceeds of the sale are to be applied, first, in defraying the costs, charges, and expenses incurred in and about the sale; secondly, in satisfying the amount of the fine and costs; and the surplus, if any, is to be paid over to the Public Trustee for the persons entitled, upon their establishing their right thereto.

Settlement of
disputes
between owner,
local authority
and Registrar.

If any dispute or question arise between an owner and a local authority, or the owner or local authority and the Registrar, either under Sections 116 or 117 of "The Public Works Act, 1905," such dispute may be referred to the Minister for Public Works for decision, and his decision in writing is final and conclusive on all parties; but he may, before giving such decision, set up a Commission of Inquiry to hear evidence and argument, and if that be done the parties must appear or be represented before such Commission, and must adduce such evidence as will in their opinion be sufficient to support their view of the case.

Legal
interpretation
of meaning of
Sections 116,
117 "Public
Works Act,
1905."

Sections 2 and 3 of "The Public Works Act, 1903," which with their amendments are now embodied in Sections 116 and 117 of "The Public Works Act, 1905"), were found to be difficult of interpretation, and in order to settle these differences, so far as possible, the Registrar-General of Land stated a series of questions for the opinion of the Court of Appeal (see *In the matter of "The Land Transfer Act, 1885,"* 8, Gaz. L.R., 4; 25, N.Z.L.R., 385), and the following is a digest of and to some extent a commentary upon the answers made by the Court, and particulars of the cases referred to in the judgment have already been given.

The Court decided as follows:—

Subdivision
without new
road or street.

- (a) Land may be "subdivided into allotments for the purpose of sale" within the meaning of Section 3 of "The Public Works Act, 1903" (now Section 117 of "The Public Works Act, 1905") without a new road or street being laid off.

- (b) The cases of *Palmer v. District Land Registrar*, and *Riddiford v. Mayor, etc., of Lower Hutt*, Previous decisions over-ruled. ought not now to be followed so far as they decide that there can be no subdivision into allotments for the purpose of sale without a new road or street being laid off; but there must be a subdivision into allotments for the purpose of sale in the sense in which that term is ordinarily used before the enactment last referred to above can operate. (This last ruling would appear to still leave it open for an owner to sell portions of his land as before, as in the case of *Mayor, etc., of Wellington, v. Francis and Overend*, 21, N.Z.L.R., 787, provided he be careful not to make or publish any scheme of subdivision.)
- (c) Where a proprietor of land under "The Land Transfer Act" proposed to deposit in the Land Registry Office (pursuant to Section 171 of "The Land Transfer Act, 1885"), a plan of subdivisions of land fronting on to an existing road less than one chain wide, but where no new road was laid out, the Court decided that the Registrar ought to refuse to accept such plan for deposit whether it was prepared either before or after the passing of "The Public Works Act, 1903." Plan of land fronting on to road less than one chain wide where new road is not provided cannot be deposited.
- (d) Subdivisional plans of land fronting on an existing road less than one chain wide were received for deposit under Section 171 of "The Land Transfer Act, 1885." Some of the plans were received prior to the coming into force of "The Public Works Act, 1903," and some afterwards. In either of these cases the Court held that the Registrar ought to refuse to accept and register any transfer of a subdivision shown on such plan. (This decision must not be confused with the case of a subdivisional plan deposited before the passing of "The Subdivisional plans deposited after "Public Works Act, 1900," but before "Public Works Act, 1903," are ineffective.

Public Works Act, 1900," which is allowed by law.)

- (e) Where land had a frontage to an existing road less than a chain wide, and new roads, each a chain wide, were laid off, and where a subdivisational plan showing the new roads and the old roads unwidened, the Court held that such plan ought to be rejected where part of the land is sold actually abutting on the original road less than one chain wide.
- (f) A device for preventing the operation of the Act had in some cases been adopted, viz., by reserving to the owner a narrow strip of land along the margin of the original road, which was less than one chain wide; but the Court held that if the reservation of the strip was, in the opinion of the Registrar, a mere pretence for evading the Act, the Registrar should reject the plan.
- (g) The Court held, in the case of a land owner in a borough who had in subdividing land into allotments that fronted a street less than one chain wide, dedicated the necessary land to widen the street, that he was under no liability to form or metal the part so dedicated, and that the plan could be deposited without his doing so.
- (h) A subdivisational plan of land fronting an existing public street less than one chain wide, and intended for sale in lots, was presented for deposit, but was refused by the Registrar on the ground that the frontage should be set back 33 feet from the centre of the street. The plan was then withdrawn, and a transfer of one lot shown on the original plan, accompanied by a separate survey plan, was then presented for registration, and the question was whether this could be accepted? The Court held that if the Registrar had sufficient evidence to satisfy him

Case of land fronting on to chain wide road and also upon road less than one chain wide.

Reservation of narrow strip to prevent operation of Act ineffective.

Owner dedicating land to widen street not liable to form and metal it.

Selling land piecemeal ineffective if Registrar is satisfied it is part of scheme of subdivision.

that it is part of a scheme of subdivision, he should reject the plan.

- (i) The Court also decided that a transfer should not be registered in a case where the lots were part of a subdivision of land fronting on to a right-of-way 20 feet wide, which had been approved by the local authority, but where the sale of such lots had not taken place until after the passing of "The Public Works Act, 1903." The Court also decided that the transfer could not be registered even if the sale took place before the passing of the Act of 1903. (It is, however, assumed that the decision of the Court does not affect transfers of land shown on plans of subdivision deposited prior to the passing of "The Public Works Act, 1900.")
- (j) The next decisions have reference to an ingenious practice that existed for evading the provisions of the Act. An application was made to bring land under the provisions of "The Land Transfer Act, 1885," which land fronted on to a road less than one chain wide, but the applicant asked for two or more certificates of title for parts of such land, and each of such parts fronted on the existing road. In this case it was decided that the Registrar could not refuse to issue such several certificates, unless he were of opinion that it was part of a scheme for subdivision into allotments for the purpose of sale.
- (k) A somewhat similar question to the last one arose out of the following facts:—Sections 424 and 425, City of Wellington, have a frontage to a street 50 links wide, but in 1897 a plan of subdivision of these lands was prepared, which divided the land into 13 allotments fronting rights-of-way 30.3 and 50 links wide, and these rights-of-way were approved by the City Corporation, but no dealings with the lots

Subdivision of land fronting on rights of way 20 feet wide.

Case where owner can require Registrar to issue separate certificates for parts of his land.

Bringing land under Land Transfer Act and requiring Registrar to issue certificates for it in several portions.

took place until recently, when the owner lodged the old plan of 1897 in the Registration Office, with an application to bring the land under the Land Transfer Act, and for the issue of separate certificates for each of the allotments. The Registrar refused the whole application, save and except that he intimated his willingness to issue a certificate of title for sections 424 and 425 as a whole, and without any reference to the said plan. In this case the Court held that the Registrar was right in such refusal.

Owner mortgaging part of his land and requiring Registrar to issue separate certificates for that purpose.

- (l) The Act had sometimes been evaded where the land fronted on to a road less than a chain wide by the following ingenious device. The owner in such case, where the land was under the Land Transfer Act, executed a mortgage over, say, one-third part of the land, the mortgage being over, say, the centre portion. He then required the issue to him of three separate certificates of title, viz., one for the purpose of the mortgagee, and one for each of the other two portions. The Court was asked whether in such a case the Registrar could refuse to issue new certificates of title, and the Court decided that he could not refuse unless he were of opinion that the arrangement was part of a scheme of subdivision into allotments for the purpose of sale.

Where owner applies for separate certificates for parts of his land.

- (m) A somewhat similar question to the last one arose out of the following facts. Registered proprietors of land under "The Land Transfer Act, 1885," frequently applied for the issue to them of a number of certificates of title, each for parts of the land held by them under one certificate, and it had been the practice to grant such requests, as they facilitated dealings with the land. On the question being put to the Court whether the Registrar ought to refuse such application, it decided that the Registrar

should require proof that the issue is not with the intention of subdividing the land into allotments for the purpose of sale.

- (ii) Another method of getting over the provisions of the Act in cases where land did not front on a public road was for the owner to provide a strip of land which did front on to an existing road of statutory width, and then in subdividing the land to give to the purchaser of each allotment an undivided share in the strip. By this means each piece of land had by means of the strip a nominal frontage to a public road. In such case the Court decided that the Registrar ought to refuse to register transfers of such lots.
- (o) The Court also decided that the meaning of the words "subdivided into allotments in Section 3 of "The Public Works Act, 1903" (now Section 117 of "The Public Works Act, 1905"), had not the same meaning as the words "subdivides the same into allotments for the purpose of disposing of the same," in Section 20 of "The Public Works Acts Amendment Act, 1900," and the Court also decided that the Registrar ought not to follow the judgments of the Court in the cases (referred to in the last chapter) of *In re transfer to Palmer* (23, N.Z. L.R., 1013), and *Riddiford v. Mayor, etc., of Lower Hutt* (24, N.Z.L.R., 54), so far as those cases decided that there can be no subdivision into allotments for the purpose of sale without a new road being laid out. The Court was, however, of opinion that there must nevertheless be a subdivision into allotments for the purpose of sale in the sense in which that term is ordinarily used before Section 3 of "The Public Works Act, 1903" (now Section 117 of "The Public Works Act, 1905") can operate.

Providing strip of land fronting road and giving purchasers of allotments an undivided share in such strip.

Difference between "subdivided into allotments" and "subdivides the same into allotments, etc."

As an illustration of this question the following case was stated:—

Case illustrative
of the foregoing
question.

A subdivisational plan of Section 800, Wellington, made in February, 1904, was deposited in the Land Transfer Office on the 19th January, 1905, and accepted for deposit. The plan divided the section into eight lots, each having a frontage on Constable Street, and lot 1 having a frontage also on Owen Street. Both of these streets are 75 links wide. They are public streets on the plan of the City of Wellington, as laid out under New Zealand Company's survey. On the 1st February, 1905, a transfer of lot 8 on the plan, being the first dealing proposed on the said subdivision, was lodged for registration at the Land Transfer Office. The Registrar refused to register same unless an exemption from the street widening clause in "The Public Works Act, 1903," was produced.