

A TREATISE
UPON
THE LAW
OF
ROADS, BRIDGES, AND STREETS
IN NEW ZEALAND

BY

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CORRIGENDA.

- On Page 164: For the words "the Act" read "The Public Works Act, 1905."
- On Page 171: Paragraph 5 (q) should be 5 (y), and instead of the words "Regulating the public or private traffic of" read "Regulating heavy traffic as defined by."
- On Page 192; For the words "Section 125 of the Public Works Act, 1882," read "Section 182 of the Public Works Act, 1905."
- On Page 194: For the words "the same Act" in the last paragraph but one read "The Public Works Act, 1905."
- One Page 233: For the words "No. 11," in the second paragraph, read "No. 10."
- On Page 305: For the words "Section 199," in the third paragraph read "Section 119."

INTRODUCTION.

This work is designed to give in concise and popular form, and without technical terms or unimportant particulars, the main principles of the law relating to Roads and Streets in New Zealand. Design and scope of the work.

The chief object which the writer seeks to compass is to give in plain language such information as will enable anyone to ascertain broadly what are the rights of the public in respect to roads and streets generally. It is also proposed to give such details of the practical working of the law as will enable local bodies and others entrusted with the care and maintenance of roads and streets, to carry out their duties more easily than is now sometimes the case. Much of this information can only be gathered from the perusal of a large number of statutes, some of which have only an indirect bearing on roads, and to which the general public cannot readily obtain access; and a good deal of the information cannot be found printed in statutes at all, or in other publications, as there is no general work on the subject. The information given in this work really contains the result of twenty-three years close and intimate experience gained in connection with the administration of this special branch of the law, and it includes particulars of the requirements of various Government departments, who are entrusted with duties pertaining to roads.

This being so, and as this branch of the law is outside the usual beaten track, it is hoped that the information given in this work may also prove of use to the legal practitioner.

Some of the statutes relating to the subject are complicated, contradictory, and consequently difficult of interpretation, and in such cases, where there has been no recorded judicial decision, and where there may be some reason to doubt, the writer has simply said: "It seems," or "It is presumed," or "It is held," or such like words; and where that is done, the statement should be received with caution. Caution as to statements made in this work.

Voluminous indices are supplied which will enable any part of this branch of the law to be referred to with ease and expedition.

Wellington, March 30th, 1907.

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CHAPTER I.

THE DIFFERENCE BETWEEN BRITISH AND NEW ZEALAND LAW.

When New Zealand was separated from New South Wales, and became a separate colony in 1840, the law of the United Kingdom became—so far as it would apply—the law of New Zealand (*vide* “The English Laws Act, 1858”).

Law of United Kingdom originally adopted in New Zealand.

Since those days, however, that law has been so much modified and altered by New Zealand enactments—especially in regard to roads—that it now differs much from English law.

The part of the old English law relating to roads and streets that is still operative here relates principally—

Portion of law of United Kingdom that is now operative in New Zealand.

- (a) To the rights of the public to use a public highway by day or night for any reasonable or legitimate purpose, without let or hindrance.
- (b) To the right of persons or the public to an injunction against anyone who interferes with such privilege.
- (c) To the power which private persons and others have, in certain cases, to abate nuisances on roads; and
- (d) To the liability in some cases for negligence in respect to things done, or omitted to be done, on roads or streets, which cause special damage to any person.

The other, and by far the greater part of the law relating to roads and streets is to be gathered from many New Zealand statutes, which will be hereafter mentioned.

Cases in which
old English law
applies in New
Zealand.

The cases in which the old English law applies may to some extent be gathered from a perusal of Chapters VI. to VIII., inclusive, of "The Law of Highways" (second edition, 1897), by Glen, or from Chapters IV. and V. of "Pratt's Law of Highways" (fourteenth edition, 1897). In perusing these works it must, however, be borne in mind that no reference therein to any Imperial statute relating to roads passed subsequently to 14th January, 1840, has any effect in this colony: and also that "The Highways Act, 1835," 5 and 6, Wm. IV., Chapter 50, is held not to be in force in New Zealand. Therefore any statement in Glenn or Pratt must be read subject to any New Zealand statute that specially deals with the matter.

Road in Eng-
lish usually
called highway,
turnpike road,
or main road.

In English law a road is usually referred to either as a "highway," a "turnpike road," a "main road," or a "street," but the term "highway" was the common term applicable to and comprehending all public ways, and it included a way over or through both private or common lands which the public had a right to use, by prescription, dedication, or Act of Parliament. In New Zealand law the term "road" has practically the same meaning as "highway" in English law, except that it does not usually include a "street," which generally has a technical meaning, as hereinafter appears.

Derivation of
term "High-
way."

The term "highway" is of a very ancient date, and the references in the "Book of Numbers," to the road through which the children of Israel are reported to have desired to pass through the land of Edom, is translated in our version of the Bible as "The King's Highway." A road was originally called in England "The King's Highway"; for the first roads made in England, of which we have any record, bore that title. The term appears to have arisen in the time of Molincius, a King of the ancient Britons, who decreed that there should be roads or ways of succour by which persons who had committed some trespass could flee in safety to a temple or other place of security, and such ways were provided accordingly. Those ways were, however, not sufficiently defined, and strife arose in consequence, so that when his son Belinus became King, he defined four great

roads, the longest of which was from Cornwall to Caithness; and these roads were called "King's Highways." The term "Highway" was afterwards applied in law to any public road that was of sufficient size to warrant the title, and even now a road is often spoken of in popular language as "The King's Highway." The term "Public Highway" generally meant a public way for carriages and other kinds of traffic; but it did not necessarily have so wide a meaning; and it sometimes meant a bridle road or way for horse traffic only.

Derivation of term "King's Highway" and meaning of term "Public Highway."

A "Turnpike Road" was a road upon which a toll gate existed. These gates were called "Turnpike Gates," because some of them had spikes on top to prevent persons evading the toll by climbing or jumping over them; and the proceeds from the tolls were used to construct or maintain the roads or bridges on which they were placed, or to which they led, and also to recoup the cost to such persons as had advanced the money to construct or improve them, and they were usually established by Act of Parliament.

Meaning of "Turnpike Road."

The term "Main Road" was in England a road that had to be maintained by a County Council, as distinguished from a "Highway," which must be maintained by a Highway Board or some other authority, or even by private persons. The term "Main Road" was also applied to a road that served more than merely local convenience, such as a road between two great towns, or a thoroughfare to a railway station, etc.

Meaning of "Main Road."

The term "Street" referred primarily in England to a road in a residential or urban district, with houses on at least one side of such street; but in New Zealand it is generally applied to a highway in a city or borough.

Meaning of "Street."

In New Zealand statute law the terms "Highway" and "Main Road" are used to a very limited extent, and the term "Turnpike Road" is not used at all.

Highway and Main Road used to limited extent in New Zealand and Turnpike Road not used at all.

The term "Highway" is used in Section 53 of "The Town Districts Act, 1881," in Section 2 of "The Impounding Act, 1884"; in Section 257 of "The Counties Act, 1886"; in Sections 101, 112, 130 and 131 of "The Public Works Act, 1905"; and in Section 3 of "The Tramway Act, 1894";

"Highway" used in certain statutes.

in all of which it means a public road. The term is also used in Section 209 of "The Municipal Corporations Act, 1900," where it means a street in a borough. It is used also in Section 213 of the same Act, and in Section 9 of "The Motor Regulation Act, 1906," where it means a street if within the boundary of a borough, or a road if it be outside such boundary.

"Main Road" referred to in certain statutes.

The term "Main Road" is to be found in Section 3 of "The Town Districts Act, 1881," and in Section 246 of "The Counties Act, 1886," and Section 3 of "The Town Districts Act, 1906," where it practically means a "County Road." Section 246 of the Counties Act refers to roads which were declared as such for the purposes of "The Roads and Bridges Construction Act, 1882," but as that Act has long since been repealed, the term has now no practical meaning, neither does it have any effect in relieving local bodies from the burden of constructing or maintaining such roads.

Special application of term "Main Road" in Local Bodies Loans Act, 1901.

The term "Main Road" is also to be found in Sub-section 1 of Section 80 of "The Local Bodies Loans Act, 1901," under which enactment Borough Councils, whose inhabitants numbered less than 4000 at the last census, may obtain loans from the Government for the construction of a bridge on a main road, or for the establishment of a punt or ferry where no bridge has been provided on such road. The question as to whether a road is a "Main Road" or otherwise, for the purpose of that enactment, is decided by the Colonial Treasurer on the advice of the Minister of Lands.

In England owner of land owned half width of adjacent road.

In England the soil of a road up to the centre line of same remains, in most cases, vested in the owner of the land abutting on the road, and the use of the land as a public highway does not deprive him of such right, unless the ownership has passed from him to some other person or body by dedication, grant, prescription, or by long use. The owner in such cases has frequently rights that can be enforced against the general public, such as restricting the use of the road to certain kinds of traffic, or even of enforcing a toll, but in some cases he has to maintain the road.

In New Zealand this is not the law; for by Section 102 of "The Public Works Act, 1905," the fee simple of all public roads within the meaning of that Act vests in the Crown; and by Section 212 of "The Municipal Corporations Act, 1900," the fee simple of all public streets in a borough vests in the Borough Council. The only exception to this rule is where private land, containing mines of coal or other minerals, has been taken by Proclamation for a road or street under the provisions of "The Public Works Act, 1905," or any other Act or Provincial Ordinance. In such cases the mines and minerals are exempted from the operation of the Proclamation, and remain vested in the owner of the adjacent land.

In New Zealand
fee simple of
Roads vest in
Crown, and of
Streets in
Borough
Council.

In England most roads and bridges outside boroughs are maintained by the County Councils or Highway Boards within whose districts they exist, and it is only where there has been a mutual agreement, or where it is the immemorial custom, or there are special statutory provisions, that the cost of maintaining such works is borne, wholly or partially, by any other local body, or by any corporation or private person.

In England
Roads and
Bridges outside
Boroughs main-
tained by
Counties and
Highway
Boards.

In New Zealand, however, all public roads and bridges are maintained by the Government, or by local bodies, out of public funds, and there is statutory provision for apportioning the cost of constructing or maintaining roads, bridges, ferries, and fords that serve more than one district, whether the local bodies concerned agree thereto or not.

In New Zealand
Roads and
Bridges main-
tained by
Government or
local bodies.