

## CHAPTER V.

### *THE GENERAL LAW RELATING TO ROADS AND STREETS.*

In addition to such portions of the general law relating to roads and streets, as have already been mentioned when discussing the special divisions of the subject in previous chapters, there are certain statutory enactments, the effect of which will now be considered; and in doing so a distinction will be made between highways outside the boundaries of boroughs and highways within boroughs. The former will be called roads, and the latter streets, as already explained in Chapter II., but where the term highway is used in this chapter, it means either a road or a street.

Distinction between highways within and outside Boroughs.

This subject is perhaps best dealt with by considering first of all the rights of the public generally to use roads and streets, and then considering respectively the rights or powers which Road Boards, Town Boards, County Councils, Borough Councils, and the Governor or Government can exercise over roads. They are all different; but they increase in complexity and strength in the order enumerated; so that after considering, to some extent, the rights of the public, a thorough exposition, first of all, of the powers of a Road Board will be given, as this will render it less difficult to understand the statutory provisions governing the powers of a County Council, a Borough Council, a Town Board, or the Government, over roads. In addition to the above, Drainage Boards, River Boards, Harbour Boards, Stipendiary Magistrates, and District Land Registrars have also some powers over roads, and these will also be discussed afterwards. This chapter will therefore be devoted to the consideration of the rights of the public generally over roads and streets, but the other parts of the subject will be dealt with in subsequent chapters.

Divisions of the subject.

## THE RIGHTS OF THE PUBLIC TO USE ROADS AND STREETS.

How road rights arise in N.Z.

These rights in New Zealand arise, first of all, from the English law in force at the date of the constitution of the Colony in 1840, and which was then applicable to the Colony (see "The English Laws Act, 1858"). "The Highways Act, 1835," 5 and 6, William IV., Chapter 50, which was the statutory law in England in 1840, and is so still, does not seem to have ever applied to the Colony, and the law in New Zealand is therefore based on such part of the English law as was applicable to the circumstances of the Colony in 1840, supplemented by various statutes passed in New Zealand since that date.

Public right to use highway.

The public has a right to use a highway only for the purpose of passing and repassing along the same, with or without vehicles, horses, cattle, etc., and not to enter it for any other purpose. No one has the right to occupy the soil of a highway which does not belong to him by right of ownership. If he does so he is in law a trespasser; and though, as one of the public, he has a right to be on the highway, he must move on. There may be a user of a highway for the purpose of pleasure, but if the person stand still and obstruct the passage of others he may render himself liable to indictment or penalty (see "The Law of Highways," Glen, 1897, p. 66). A right of passage extends over the whole surface of the road; but the local body has the right to determine what part of the road shall be a footpath or footway, and what part shall be for horses, cattle, vehicles and carriages (*ibid.* page 67).

Rights of foot passengers.

A foot passenger has a right to cross the carriageway, and persons driving vehicles along the road are liable if they are not careful to avoid driving against the foot passengers who are crossing the road. A man has the right to walk on the carriage way if he pleases, but it is to be assumed that if he does so, when there is a pathway in fair condition, and he gets injured he might find it very difficult to prove that he himself had not contributed to the accident by his negligence. The carriage way is a way for foot passengers as well as for vehicles, and the drivers of such vehicles must exercise reasonable care.

The right to ride, drive or wheel vehicles is by Section 3 of "The Police Offences Act, 1884," and by Section 153 of "The Public Works Act, 1905," confined to the portion set out for these purposes, and it is an offence under that Act to use the footpaths for such purposes, and the first-named Act also makes it an offence for a man to use the footpath if he is carrying a load on his shoulders or otherwise to the danger and obstruction of persons using the footpaths.

Rights of  
drivers of  
vehicles.

The rules of the road, namely, "Keep to the Left" in riding or driving, and "Keep to the Right" in walking on a footpath, were originally created by common consent. The former rule is made compulsory by Section 4 of "The Police Offences Act, 1884," but there is no statutory enactment or any known recorded judicial decision as to the latter, so far as it affects roads, but it is assumed that a Borough Council could under the powers contained in Section 403 of "The Municipal Corporations Act, 1900," make and enforce a by-law requiring people to keep to the right side of a footpath.

Rules of the  
road.

It used to be the law in England that where the road was out of repair the traveller could deviate on to the adjoining land, doing as little damage and returning as soon as possible to the road, but this is not the law now where the land is fenced off from the road, consequently any one who deviates from the road in such a case is a trespasser, and is liable to the owner of the land for damages. It is doubtful if any person has the legal right in New Zealand to go even temporarily upon private land adjoining a highway in order to pass a temporary obstruction (see *Attorney-General and Southland County Council v. Miller*, 9, G.L.R., p. 145).

Right to use  
adjacent land  
when road  
founderous.

In an old case against a common carrier it was decided that no waggon ought to carry more than 2000 pounds weight, and as the defendant used a waggon in which he carried 3000 pounds or 4000 pounds weight at one time, and by which he spoiled the highway, he was held liable. In New Zealand, Section 150 of "The Public Works Act, 1905," provides that a local body may recover the cost of repairing a road damaged by extraordinary traffic or excessive weight from any person at whose order, or for whose benefit, such excessive weight has been conveyed over the road.

Original limit  
of weight for  
vehicles.

Illustration of what is extraordinary traffic.

An important and instructive case arising under Section 138 of "The Public Works Act, 1894," and Section 11 of "The Public Works Amendment Act, 1904" (which are now embodied in Section 150 of "The Public Works Act, 1905,") has recently been heard before the Stipendiary Magistrate at Taihape *vide Rangitikei County Council v. Gardner and Sons*, Magistrates' Court Reports, Vol. 1, page 1).

Particulars of case.

In that case the defendants, who are sawmillers, had damaged a road by carting timber thereon, and the Magistrate gave judgment for plaintiffs for £285, less an amount of £35 paid by the defendants to the County Council as license fees on their vehicles engaged in heavy traffic on the road. In this case the Magistrate held:—

- (1) That the matter of complaint does not arise until the extraordinary expenses have been incurred.
- (2) That the question whether traffic is "extraordinary" or not must be decided with reference to the ordinary use of the particular road (*i.e.*, that traffic which may be ordinary traffic on a road made to stand such traffic, may be extraordinary on a road not made for and not intended to stand such traffic).
- (3) That the amount of ordinary and special rates cannot be considered in reduction of expenses incurred by extraordinary traffic, but heavy traffic license fees ought to be considered.
- (4) In estimating expenses caused by extraordinary traffic, the Court ought to consider the state of the road, but the doctrine of contributory negligence ought not to be applied.

Power to make by-law prohibiting injurious traffic in certain cases.

It is also provided by Section 151 of "The Public Works Act, 1905," that where the local body is of opinion that the carriage of any particular weight, or the conduct of any particular kind of traffic will cause serious injury to a road, the local authority may make a by-law forbidding such carriage or traffic unless the cost as estimated by the local authority of reinstating the road shall be previously paid to it, and any person who commits a breach of the by-law is liable to a fine not exceeding £20. This is a very

far-reaching enactment, but in order to prevent its being improperly exercised, the Act also provides that such by-law must within one week of the making of same be forwarded to the Minister for Public Works, who has the power to veto the whole or any part of such by-law within twelve months from the time when such copy was sent to him. Any person, therefore, who is liable to be prejudicially affected by such by-law, and wants to see it vetoed, should appeal to the Minister at the earliest possible date, supplying at the same time sufficient and valid reasons for the request.

Where parties riding or driving meet on the sudden, and injury results, the party on the wrong side is held answerable, unless it appear clearly that the party on the right side had ample means and opportunity to prevent it. Party riding or driving on wrong side liable.

Non-observance of the rule of the road appears to be *prima facie* evidence of negligence, but the rule should not be so asserted as to cause injury, and a person who has been riding or driving on his own proper side should not adhere to it if, by departing therefrom, an injury can be prevented or avoided (see "The Law of Highways," Glen, 1897, p. 231). Non-observance of rule of road.

A man must not commit a nuisance on a road, but many of the things that could originally be restrained as coming under the head of "Nuisance" are now made offences under Section 3 of "The Police Offences Act, 1884." This Act gives a long list of things which if done on roads render the doer thereof liable to fine or imprisonment, and in particular one is liable to a fine of £5 if on a road he either:— Nuisances on roads.

- (a) Throws glass, filth, dirt, rubbish, earth, stones or other material.
- (b) Rides, drives, or wheels any truck, barrow, or carriage on a public footpath or carries any load on his shoulders to the danger or obstruction of persons using the footpath.
- (c) Places any hoarding, scaffolding, timber, bricks, or building material upon a road without permission of the local authority.

- (d) Leaves any truck, wheelbarrow, packing case, crate, basket, cask, barrel, package, or other encumbrance on a road.
- (e) Burns litter, straw, shavings, or other combustible materials
- (f) Leaves any inflammable material or matter on a road.
- (g) Draws or trails any sledge, timber or heavy material on a road to the injury or material damage of the road
- (h) Allows the drippings of a house to fall upon a footpath.
- (i) Opens up a drain or sewer, or removes the surface of a public footpath or road, or make a cellar door thereon without permission of the local authority
- (j) Hangs any awning, show board, or sign board on a public footpath within eight feet of the footpath
- (k) Exposes for sale anything outside a shop or doorway that encroaches on a footpath.
- (l) Suspends any carcase, meat, or offal so as to overhang a road.
- (m) Carts away any nightsoil or other offensive matter without consent of the local authority.
- (n) Spills or casts any nightsoil or other offensive matter on a public road.
- (o) Slaughters or skins any animal on a road, except in case of inevitable necessity, or leave any dead animal on a road, or suffers any dead animal to remain thereon so as to become a nuisance.
- (p) Shoes, bleeds, or dresses a horse on a road.
- (q) Permits a mare to be served by a horse on a road.
- (r) Rolls a cask, beats a carpet, flies a kite, uses bow and arrows, catapult, shanghai, or plays at any game to the annoyance of any person on a road, or allows any cart or animal to remain across a road.

- (s) Beats a drum, blows a horn, or uses any other noisy instrument, or blasts any rock, stone, or timber without permission of the local authority.
- (t) Discharge firearms without reasonable cause, or sets off fireworks or explosive material so as to endanger, annoy, or frighten passers by.
- (u) Uses abusive or insulting language so as to provoke a breach of the peace.

Any person who commits any of the following offences on a road is by Section 4 of "The Police Offences Act, 1884," <sup>Offences on roads.</sup> liable to a penalty of £10, viz. :—

- (a) If he be the driver of a dray or waggon, and rides on the same without reins, and no competent person is in charge of the animal drawing the same, or if one driver is away from his horse, or cattle, and is therefore unable to have full control thereof.
- (b) If he being the driver in sole charge acts as such in respect to more than one vehicle at a time, but he may have control of two vehicles if each be drawn by one horse only, and the horse in the hinder vehicle is attached by a sufficient rein to the back of the foremost vehicle.
- (c) If he be the driver of a vehicle, or the rider of an animal, and he does not, when meeting any other vehicle or animal keep on the left or near side of the road, or when passing any other vehicle or animal he does not pass or allow any person desirous to do so to pass when practicable on the right or off side of such vehicle or animal.
- (d) If he be the driver, and he furiously or negligently drives any animal, vehicle, engine, carriage, or conveyance.
- (e) If he drives any vehicle laden with goods that project on either side more than five feet from the centre of such vehicle.

- (f) If he drives or allows to stand any vehicle with the curtain, covering, or awnings unfastened and liable to be flapped about by the wind so as to frighten horses.
- (g) If he being the driver carries more passengers than the vehicle is licensed to carry, or if he wilfully delays on the road, or uses abusive language to the passengers, or by reason of intoxication, negligence, or misconduct, endangers the safety of property of the passengers or other persons, or if he demand more than the proper fare.
- (h) If he drives any dog or goat harnessed or attached to any vehicle.
- (i) If he permits to be at large on a public road, or without proper guidance, or to wander or to be herded or grazed thereon, or unlawfully obstructs or prevents the driving of any cattle.
- (j) If he sets dogs or other animals to fight on a road, or to attack any person or animal on a road.
- (k) If he leaves any plough, harrow, cart, or other vehicle on a road without reasonable excuse, or if he wilfully or negligently incumbers or obstructs a road.

List of further offences on roads.

In addition to the list of offences on roads set forth in "The Police Offences Act, 1884," Section 153 of "The Public Works Act, 1905," provides that every person who does any of the following things upon a road commits an offence that renders him liable to a fine not exceeding £5, viz. :—

- (a) Rides or drives any horse or vehicle furiously.
- (b) Rides or drives any horse or vehicle on a footpath constructed for foot-passengers only.
- (c) Tethers any animal on or so that it may be on the road.
- (d) Drives any entire horse or any savage or dangerous animal loose.
- (e) Plays any game to the annoyance of passengers.



- (f) Pitches any tent, booth or stall.
- (g) Makes any fire without written authority from the local authority having control of the road.
- (h) Discharges any firearms or fireworks on the road, or within fifty feet from the site of the road.
- (i) Unlawfully obstructs in any manner the free passage of persons passing along the road.
- (j) Drives any vehicle in his charge without having reins to guide the horse or other animal drawing the same.
- (k) Goes to sleep in any vehicle in his charge, so as to leave any animal drawing the same without proper guidance.
- (l) Leaves any such vehicle by going to such a distance as to be unable to control the animal drawing the same.
- (m) Does not keep any vehicle driven by him on the left or near side of the road when meeting, and on the right or off side when passing another vehicle, or does not leave a reasonable portion of the road for any vehicle, person, or animal passing him.
- (n) Impedes the traffic or endangers the safety of passengers by a load unduly projecting from the side of any vehicle or beast of burden.
- (o) Permits any cattle to be at large without proper guidance, or to wander or be herded or grazed upon the road other than in the ordinary course of driving stock.

Section 154 of "The Public Works Act, 1905," provides that if any person is drunk when in charge of any cattle or vehicle upon a road, he shall be liable to a fine not exceeding £5, or, at the discretion of the Justices, to be imprisoned, with or without hard labour, for not exceeding fourteen days.

Person drunk when in charge of cattle or vehicle.

Section 155 of the Act provides that if cattle are found straying on a road which is fenced on both sides, or has a fence on one side, and the sea on the other, it shall be lawful for the local authority having control of the road, or for any other person, to cause such cattle to be taken to the nearest

Cattle straying on road.

public pound, whether in or out of the district in which they are found straying, to be dealt with as in the case of cattle lawfully impounded.

Obstruction on road.

A person who places any obstruction on a road whereby life and limb is likely to be endangered, or who leaves any hole, excavation, or dangerous formation in or upon a road without fencing or enclosing the same, or without keeping a light burning upon such enclosure from sunset to sunrise, is liable to a penalty of £20, or to be imprisoned for three months, or to both, at the discretion of the Court (see Section 5 of "The Police Offences Act, 1884").

Breaking lamp or lamp-post.

Any one who wilfully extinguishes, injures, or breaks a lamp, or who breaks or injures a lamp-post on a road, is liable to a penalty of £10, or to three months' imprisonment (see Section 6 of "The Police Offences Act, 1884.")

Laying poison on road.

Any one who lays poison on a road in any borough or town district, or on or within three chains of a road outside any borough or town district, is liable to a penalty of £10; but this penalty cannot be enforced if the poison be laid in pursuance of "The Rabbit Nuisance Act, 1882," neither can it be enforced in the case of noxious weeds on a road, that may have been sprayed with a poisonous liquid, if such liquid be applied between 30th April and 31st December in any year, and if the word "Poison," painted in white lead paint in letters not less than four inches in length on a black board, be fixed on a pole not less than eight feet from the ground in a conspicuous position near where the poisonous liquid is used (see Section 15 of "The Police Offences Act, 1884," and Section 6 of "The Police Offences Amendment Act, 1903").

Business on Sunday.

A person is not allowed to carry on his business on a road on Sunday, but this provision does not apply to works of necessity or charity, or to the driving of stock or sale of medicines, or the sale or delivery of milk, or to persons driving any public carriage or cab, or to livery stable keepers (see Section 16 of "The Police Offences Act, 1884").

Drunkenness, obscenity, indecency, etc.

There are other provisions in "The Police Offences Act, 1884," and its amendments, which are intended to restrain drunkenness, obscenity, indecency, and similar

things on roads, which are not necessary to set out in this work; but Section 17 of the Act provides that masters are responsible for the acts of their servants when the latter are acting under their orders, so that in all prosecutions under the Act the master should either be made or joined as a defendant.

The Postmaster-General may cause post office pillar boxes to be constructed and maintained in any road, street, or public place under the jurisdiction of any local authority (see "The Post Office Act Amendment Act, 1906," Section 8).

Post Office pillar boxes.

The public have a right to use the foreshore or seashore as a highway in all cases except where, as in the case of Harbour Boards, etc., some special right is granted; or, as in the case of railways on the foreshore, where the land is occupied by or with the permission of the Crown for some public purpose; but if a road adjoins a foreshore, and any person removes sand, stone, or boulders from such foreshore to the danger of the road, he is liable, by Section 7 of "The Police Offences Amendment Act, 1903," to a fine of £5. The word foreshore in this connection means the portion of the seashore or foreshore lying between the line of high and low water marks.

Right to use foreshore or seashore.

As a rule a road is reserved, one chain wide, by the Crown along all high water lines of the sea and of its bays, inlets, and creeks, and along the margin of all lakes exceeding 50 acres in area, and along the banks of all rivers and streams of an average width of 33 feet (see Section 110 of "The Land Act, 1892"). This provision has, however, not been always in force, and there are some cases where Crown Grants have been issued which give riparian rights. Thus, if the Crown Grant describes a river as one of the boundaries of the land granted thereby, and such river is a non-navigable one, the title of the owner extends to the centre line of the river. The question as to whether a road exists at any place can be answered by reference to the record maps in the office of the Chief Surveyor of the district.

Road reserve along high water mark, etc.

Traction  
engines on  
roads.

The public have a right to use traction engines on roads subject to such by-laws regulating their use or restraint as the local body may think fit to make under the general powers as to heavy traffic vested in it. In all cases where traction engines are used, they are also subject to the provisions of "The Police Offences Act Amendment Act, 1890." This Act requires that the engine must be accompanied by two men, who must keep a careful look out both before and behind the engine for horses and vehicles, and must warn riders and drivers of the proximity of the engine; and these men must, if necessary, assist such riders and drivers to pass the engine in safety. The rider or driver of a horse or vehicle may signal to the engine driver to stop until such rider or driver can get past, and if the driver of the engine sees that any one has a difficulty to pass he must also stop. The engine when travelling is required to carry a red lamp both before and behind between sunset and sunrise, and the owner's name must be legibly painted on the engine, and in counties and boroughs where registration is compulsory, there must also be painted on the engine, in figures six inches long, its registered number. A fee for registration may be charged, but such fee must not be excessive or in the nature of a tax (see *Joshua Hamlyn v. Alexr. Ferrier*, Magistrates' Court Reports, Vol. 1, p. 13). If a license fee is intended to be imposed, a by-law providing for the payment must be made under the powers contained in Section 139 of "The Public Works Act, 1905."

Motor-cars.

Motor-cars, and similar contrivances, subject to by-laws made by local bodies, may be used by the public on roads, but such by-laws are subject to disallowance at any time by the Colonial Secretary. A motor-car is a vehicle within the meaning of the provisions of any Act or by-law thereunder that relates to vehicles, except that it is not a vehicle within the meaning of "The Police Offences Act, 1884." A motor-car must carry a bell or other instrument capable of giving sufficient warning of its approach, and no one is allowed to drive a motor-car at a greater rate of speed on a public road than may be reasonable. A driver of a motor-car need not be a certified engineer unless the car is used for the conveyance of passengers or haulage of goods for hire.

*MOTOR-CARS.*

An Act, intituled "The Motor Regulation Act, 1906," Motor-car Act, 1906. was passed last session of Parliament, giving certain local bodies power to register motors used on streets or roads. The object of this enactment appears to be to enable the owners or drivers of such machines to be easily identified if they cause damage, or if they contravene any law or by-law with such vehicles.

The Act permits the Minister for Public Works, or the Minister for Railways, or any local authority (having the power to make by-laws regulating the use of vehicles), to make by-laws regulating the use of motors on bridges and other places where such use would be attended with risk of damage or danger to the public; but the Act does not give all local bodies the power to register motors. Power is only given to the Council of a borough having a population of not less than 5000 inhabitants, or to a County Council to do so; but if the vehicle is registered in one district, such registration has effect throughout the whole colony. Power to make by-laws.

The Act applies not only to motor-cars and motor-cycles, but to all vehicles propelled by mechanical power on roads or streets which weigh less than three tons unloaded. The following are the principal provisions of the Act:— Act applies to motors and vehicles propelled by mechanical power.

"Motor" means any vehicle propelled by mechanical power if it is under three tons in weight unladen, and is not used for the purpose of drawing more than one vehicle (such vehicle with its locomotive not to exceed in weight four tons unladen). The weight of any water, fuel, or accumulators used for the purposes of propulsion are not to be included in computing the weight.

"Registering Authority" means the Council of any town or borough having a population of not less than five thousand, and in all other cases means the County Council. Registering authority.

The Act extends and applies only to districts controlled by registering authorities which have by resolution decided to bring the Act into operation.

Governor may  
make by-laws.

The Governor has power to make regulations providing for the identification of motor-cars, and for regulating the keeping and use of inflammable or explosive liquids or fuel, and for regulating the use and control of motor-cars so as to insure the safety of the public, and for imposing fines not exceeding £10 for the breach of any such regulations.

Sign posts  
restricting use  
of motors or  
limiting speed.

The local body which has made by-laws preventing or restricting the use of motors on bridges or dangerous places is required to set up sign posts at such places denoting the limit of speed for motors passing such places. A motor is required to carry a light between sunset and one hour before sunrise, and the driver of any motor guilty of reckless driving may be apprehended by a constable, without warrant, if he refuses to give his name and address, or if the motor does not bear the marks of identification; and in case of accident occurring to any person, or to any horse or vehicle, owing to the presence of the motor, the driver is also required to stop, and, if required, give his name and address, and the name and address of the owner, and registration mark or number of the motor.

Public notice to  
be given.

Every registering authority which decides to bring the Act into force must give public notice of such decision by not less than two advertisements in some newspaper circulating in the district, in each of the four weeks next preceding the date upon which the Act is first to be brought into operation, and by advertisement in the *Gazette*.

Motor must be  
registered.

Every motor must be registered with a registering authority, and every registration is to be in the form prescribed by regulations, and a fee of ten shillings may be charged by the registering authority upon the registration of any motor having not less than four wheels, and five shillings in the case of a motor having less than four wheels.

Penalty for  
using unregis-  
tered motor, etc.

If a motor is used upon a public road or street without being registered, or if the mark to be fixed in accordance with the Act is not so fixed, or if, being so fixed, it is in any way obscured, or rendered or allowed to become not easily distinguishable, the person driving the motor is guilty of an

offence under the Act, unless, in the case of a prosecution for obscuring a mark or rendering or allowing it to become not easily distinguishable, he proves that he has taken all steps reasonably practicable to prevent the mark being obscured or rendered not easily distinguishable. Provided that—

- (a) A person shall not be liable to a penalty under this Section if he proves that he has had no reasonable opportunity of registering the motor in accordance with this section, and that the motor is being driven on a road or street for the purpose of being so registered.
- (b) Any registering authority may assign to any manufacturer of or dealer in motors within the colony of New Zealand, on payment of an annual fee not exceeding one pound, a general identification mark, which may be used for any motor on trial after completion, or on trial by an intending purchaser; and a person shall not be liable to a penalty under this section while so using the motor if the mark so assigned is fixed upon the motor in the manner required by the said registering authority in accordance with the provisions of the Act.
- (c) In the case of any motor used for trade purposes, or of any motor plying for hire, it is not necessary to affix to such motor the registration marks aforesaid if in the opinion of the registering authority such motor already carries such distinctive marks of ownership as render a registration mark unnecessary.

Every registering authority is to keep a list of all Registered list of motors to be kept. motors registered by it; and such list is at all times to be open for inspection by the police, or by the officers of any other registering authority, or by any person proving that he has reasonable grounds for wishing to inspect the register.

If the ownership of any motor is changed, notice of Change of ownership. the change is to be given either by the new or the old owner to the registering authority with which the motor is registered,

and an application is to be made either to cancel the registration of the motor, or to continue the registration under the new ownership.

New owner.

Provided that if the new owner elects to continue the registration, a fresh registration is to be effected in his name, and he is to pay the usual fee.

### *GENERAL.*

Rights of public  
restricted in  
other ways.

There are many other cases in which the right of the public to use roads may be regulated or restricted, such as by the imposition of tolls, restrictions as to gates, heavy traffic by-laws, and many other things, but as these matters can be more conveniently dealt with later on when considering the powers of Road Boards, County Councils, etc., over roads, this chapter has not been encumbered with them.