

CHAPTER VI.

THE POWERS OF A ROAD BOARD OVER ROADS.

GENERAL.

All district roads are under the control of the Road Board in whose district they may be situated, and the Road Board may construct and repair the same; but the title to the land upon which a public road exists or is laid off is vested in the Crown. Such title includes the soil of the road, together with all materials and things of which the road is composed, or which is capable of being used for the purposes thereof, and are placed or laid upon the road (see Sections 102 and 107 of "The Public Works Act, 1905." It will be gathered from this that a Road Board has limited rights only over a road; and this is the reason why it is necessary for a Road Board to obtain the consent of the Governor or Governor-in-Council when the Board wishes to sell or deviate a road; and it also shows the grounds upon which the Crown may interfere in other ways, as will appear hereafter.

Subject to certain powers of interference by Government, and also to a very limited extent by County Councils, as will hereafter be explained, a Road Board has the following general powers over district roads:—

It has full power to do all things necessary to construct and to maintain in good repair any road under its control (see Section 139 of "The Road Boards Act, 1882," and Section 112 of "The Public Works Act, 1905").

Road Board not compelled to maintain road.

An important question in this connection is whether a Road Board can be compelled to repair a district road vested in it. It would appear that it cannot be so compelled. There is no statutory provision imposing that liability upon it, and the cases on the subject which have been decided in New Zealand seem to show that a Road Board is only liable for "misfeasance" in repairing or constructing a road, but not for nonfeasance. "Misfeasance" means doing a thing in an improper or negligent manner, and thereby causing damage. "Nonfeasance" means not doing anything at all. In the case of *Pascoe v. The Port Levy Road Board* (4, N.Z.L.R., S.C., 150), it was held that when a Road Board has levied rates for the purpose of repairing a road, and has taken upon itself the duty of repairing it, the Board is liable for the consequences of not keeping it in proper repair, but this does not appear to apply to any general liability of a local body to repair a road, for in *Tarry v. The Taranaki County Council* (12, N.Z.L.R., 467), which is a much later case, the Court of Appeal held that the County Council was not liable for the repair of a road, a hole upon which had caused injury to the plaintiff, and that the Council was not liable for mere nonfeasance such as the non-repair of roads.

County Council can be compelled to maintain County Roads.

A County Council can, however, be made to repair a County road if ordered by the Governor so to do under the powers conferred by Section 248 of "The Counties Act, 1886," but there is no such provision in the case of a District Board.

Road Board not liable to repair unformed roads.

A Road Board is not bound to keep in repair roads which have never been formed, but which remain in a state of nature; and the Board is not liable for injuries occasioned by defects in such roads to persons who may use them (see *Inhabitants of Kowai Road Board v. Ashby*, 9, N.Z.L.R., 658).

Repair of portion of unformed road will not make Board liable to repair the whole road

The same case also decides that the execution by a Road Board of some work upon a portion of a long line of unformed road, as by filling up some holes formed therein under special circumstances, is not sufficient to throw upon the Board the duty of repairing the whole line of road, or

to alter its liability in respect to the unformed portion thereof with which it has not interfered.

The question often arises as to whether or not a local body is liable for accidents upon a narrow dangerous road, which might have been avoided if the road had been fenced. This question is answered by the case of the *Wairarapa North County Council v. Spackman* (10, N.Z.L.R., 569), where the Court decided that "if a local body construct a narrow steep road with a steep embankment on one side and a high bank on the other, there is no such duty on the part of the local body to fence the road as to make the omission to fence actionable in the case of injury resulting from horses becoming frightened and unmanageable, without fault of the driver, and dragging a vehicle over the unfenced bank. It is questionable whether the local body would not be liable if it had fenced such a road, and then, with knowledge, allowed the fence to be out of repair and dangerous, and an accident happened caused thereby." Accidents on narrow or dangerous roads

Another question which frequently crops up is as to whether a local body which has caused a barrier or fence to be erected upon a public road, for the purpose of preventing people from falling into a gap accidentally caused in the road, is liable for damage caused to anyone running into such fence, etc., at night unless it is lighted. The answer to this question seems to depend entirely upon the circumstances of the case. Thus, if the road is an important one, and the position of the barrier is such as to be dangerous, it appears that it ought to be lighted at night. In the case of the *Featherston Road Board v. Tate* (1, Gaz. L.R., 36 : 17, N.Z.L.R., 349), the Court of Appeal held that "Unless there has been negligence in the erection or maintenance of the fence or barrier, not to light the same at night is not negligence on the part of the Board, where, looking to its means and resources, and the position of the obstruction, it could not reasonably be expected to light such fence or barrier; and that the question as to whether it has done all that it could be reasonably expected to do is a question of fact, the finding of a Magistrate upon which is conclusive." Lighting barriers or fences on or across roads at night

Injuries to road
by private
persons; power
to restrain.

Where some injury is done to a road by some private person or corporation, and the local body desires to restrain such action or to claim damages, it should be quite certain that the road is a public road vested in the Crown, or else that the injury complained of can be restrained under its statutory powers; otherwise the local body may find itself in the same position as was the case in the *North-East Valley Road Board v. Proudfoot* (4, J.R., N.S., S.C., 22). In that case the Road Board having control and management of a public road, brought an action against certain contractors to recover damages for injury to it by them in removing the surface. The statute under which the plaintiffs were incorporated provided that in cases of injury done to any road within the district, they might repair the road and recover the expense of doing so from the wrongdoer. The road in question had been dedicated to the public, but the owner of the soil had not parted with the fee. The Magistrate non-suited the plaintiffs, on the ground that they had no power to sue, and the Supreme Court held, on appeal, that the Board having no property in the road, could not maintain the action, and that they were restricted to the remedy provided by the statute.

Liability of
Road Board to
repair bridge.

The limit of the liability of a Road Board to repair a bridge vested in it is shown in the case of the *Heathcote Road Board v. Manson* (4, J.R., N.S., S.C., 112). In that case the Supreme Court held that "an incorporated Road Board having by law the control of bridges within its district, is not liable for injury sustained by passengers over a bridge, owing to its defective state, unless it be shown that the defect which occasioned the injury was caused by some act of the Board or its servants, or that it was aware of it; although the Board had power to levy tolls for the repair and maintenance of bridges." The Court also decided in this case that "the mere omission to repair a defective bridge under the control of the Board, would not render it liable in such a case unless it was guilty of negligence in constructing or executing repairs, and unless the statute imposed the obligation to construct and repair."

The action in the above case was instituted under the powers contained in Sections 79 and 81 of "The Public Works Act, 1876," but since then the provisions as to the maintenance of bridges which are now embodied in Section 119 of "The Public Works Act, 1905," have become law; and in the case of any bridge which is vested in a local body thereunder, or under the similar provisions of any Public Works Act thereby repealed, there is a distinct liability on the local body to maintain and repair such bridge, and if the local body fails so to do, the Minister for Public Works may undertake the repairs, etc., at the expense of such local body; but whether or not this statutory provision would be sufficient to entitle a person who was injured by the defective state of such bridge to maintain an action against the local body is doubtful; and it would, it is assumed, depend very largely upon the circumstances of the case.

Liability of Road Board if bridge vested in Board under Public Works Act.

A Road Board has, under Section 112 of "The Public Works Act, 1905," full powers to:

Powers of Board.

- (a) Make surveys for the laying out of new roads. Surveys.
- (b) To alter the line of road, but no new line of road can be laid off over Crown land without the consent of the Land Board. Alteration of road.
- (c) To increase or diminish the width of a road. Increasing or diminishing width.
(But to decrease the width of a road is to stop or close that portion of the road, consequently the requirements of law as to stopping the same must in such a case be observed, *see In re Selwyn County*, 5, N.Z.L.R., C.A., 163.)

The Road Board has also power:—

- (d) To determine what part of a road shall be a carriage way, and what part a footpath only. Carriage way and footpaths.
- (e) To alter the level of a road, except on the boundary of another district, unless both the local authorities agree thereto. Altering level.
- (f) To stop up a road, wholly; or to stop it temporarily whilst it is being constructed or repaired. Such road or a bridge thereon may Stopping road wholly or temporarily.

be so stopped for such period as may be deemed necessary to execute repairs thereto. (If the road is to be stopped permanently, the procedure set forth in Sections 130 to 132 of "The Public Works Act, 1905," or Section 13 of "The Land Act, 1892," must be followed.)

Drains and ditches.

(g) To enter on land and cut drains and ditches therein so as to drain water from a road. Such power includes the power to repair or clear the drains, and to erect floodgates thereon.

Making temporary road on adjacent land.

(h) To enter upon any cultivated or unfenced land adjacent to a road, and to make and use a temporary road thereon while the permanent road is being constructed or repaired.

Taking material, gravel, etc., from adjacent land.

(i) After 24 hours notice to the occupier to enter upon any land other than land occupied *bona fide* as a garden or ornamental shrubbery, and to dig and take stone, gravel, or other material therefrom, or to take stone, gravel, or other material from any river or stream except within fifty yards above or below any bridge, dam, or weir, and so nevertheless as not to divert or interrupt the course of any such river or stream or damage any building, road, or ford.

Payment of compensation.

In exercising these powers the Road Board is liable to pay compensation for any injury done and material taken, and if the Board cannot agree with the parties injured, the case is to be settled by the Compensation Court provided for in Part III. of "The Public Works Act, 1905," and if the land is native land, which has not been partitioned, or the land is unfenced, uncultivated, and unoccupied, and the owner is unknown, or cannot readily be found, the notice is sufficient if it be legibly written or printed, and is posted up in a conspicuous position at or near the place from which it is intended to take the stone or other material. The notice should be signed by the Chairman of the Road Board (see Sections 112 to 114 of "The Public Works Act, 1905").

CONTRIBUTIONS OF ADJACENT LOCAL BODIES TOWARDS COST OF ROADS AND BRIDGES.

A Road Board has power to compel adjacent local bodies to contribute to the maintenance or construction of roads, bridges, ferries, or fords in its district where the traffic upon the same largely benefits such adjacent districts. A Road Board is also empowered to obtain a contribution from an adjoining local body towards the cost of the upkeep of a boundary road, and the terms upon which contribution can be obtained in such cases will be found dealt with in detail in a subsequent chapter under the heading of "Apportioning the Cost of Constructing or Maintaining Roads, Bridges, Ferries, and Fords."

Power to compel adjacent bodies to contribute.

FERRIES.

A Road Board having control of a ferry may, by Section 120 of "The Public Works Act, 1905," let it at any time for a period not exceeding three years, but this provision conflicts with Section 160 of the Act, which limits the period of such letting to a term of one year. The explanation of these apparently contradictory provisions in the same enactment may be that where a ferry is let, with surrounding land, such as a ferry reserve, or that some other concession is given for working the ferry, such as a condition that no toll is charged to the persons or public using the same; then Section 120, allowing the lease to be for a period of three years, will apply; but that where tolls have to be paid by the public for the use of the ferry, then Section 160 applies, which limits the term of lease to one year.

Ferries may be leased.

Ferries can be established by Road Boards under the same conditions exactly as those which apply to toll gates, and these conditions will be found detailed in a succeeding paragraph. No person is allowed to hire or ply for hire in any boat or punt, or by means of any mode of conveyance whatever across any river, stream, or creek within half a mile in a straight line from any public ferry in working order, and if he does so he renders himself liable to a fine of £5 for every such offence (see Section 164 of "The Public Works Act, 1905").

Ferries may be established.

THIRDS AND FOURTHS, &c.

Thirds and
Fourths from
Crown Lands

When Crown land other than land subject to "The Lands for Settlement Consolidation Act, 1900," is sold or leased, the Road Board or County Council having the control of roads in the district in which such lands may be situated, is entitled to receive from the Government one-third of the price or value of the periodical payments and rental of all land disposed of on deferred payments, or on perpetual lease, or lease in perpetuity, or on occupation with right of purchase; and also to one-fourth of the rental of land let as a small grazing run. The terms for which such moneys are payable to the local body is generally fifteen years, but it varies in a few cases with the nature and term of the lease (see Section 126 of "The Land Act, 1892"). These "thirds" and "fourths" are, however, only payable on the net rental of the land, *i.e.*, after allowance has been made for interest on any loading placed on the land under "The Local Bodies Loans Act, 1901," and also after allowing for rebate for prompt payment of rent, etc.

Thirds, etc., to
be expended on
roads to give
access to lands
from which
they accrue.

The proceeds of the "thirds" and "fourths" above mentioned are intended to be expended in the construction and improvement of roads to give access to the lands from whence they have been derived, although the money may, under Section 130 of "The Land Act, 1892," be expended in the maintenance of bridges or on water races or drainage that will benefit the land. To enable the local body to obtain the money, it must apply to the Land Board for authority, and in so doing must submit for approval a schedule of works which the local body recommends should be done. If the Land Board approves the proposal, the Receiver of Land Revenue will then pay the money to the local body. If all the roads or other works have been completed to give access to the land, the Land Board may, on application by the local body, empower it to receive the money and pay it to the general account: or if the local body proposes to raise a loan to construct or complete roads to give access to the land, the Land Board may on application grant a certificate to the local body empowering it to pledge the proceeds of such "thirds" or "fourths" in lieu of or in reduction of special

rates as security for the loan. If, however, the local body improperly applies moneys paid to it as above, such money may be recovered as a debt due to the Crown (see Sections 131 and 132 of "The Land Act, 1892").

Where a Road Board or other local authority is notified that "thirds" or "fourths" are available for expenditure, and for a period of not less than eighteen months, fails to utilise the same, the Minister for Public Works may give the local authority six months' notice to put in hand works approved by the Land Board to the value thereof; and if during that period the local authority fails so to do, the expenditure of the money may be undertaken by the Minister, and all rights of the local body to the money will then determine (see Section 121 of "The Public Works Act, 1905").

Thirds, etc., to be expended by Minister if local authority fails to utilise same.

In places where there is no Road Board or County Council to whom payment can be made, then the proceeds of "thirds" and "fourths" arising from land therein is expended on roads or other works under the direction of the Minister of Lands, or of any person whom he may appoint (see Section 128 of "The Land Act, 1892").

Thirds, etc., to be expended by Minister where no Road Board or County exists.

Contributions towards the cost of constructing or repairing roads, etc., may, in cases where reserves are vested in any body or person as endowments, be claimed by the County Councils or Road Boards of the district in which such lands are situated. The contribution is the same as the "thirds" payable by Government in the case of lands under perpetual lease, or occupation with right of purchase, and in cases where the land is disposed of for cash the County Council or Road Board, as the case may be, is entitled to five shillings an acre on the land sold, and the money may, as in the case of Government lands, be available for securing the repayment of moneys raised under "The Local Bodies Loans Act, 1901" (see Section 249 of "The Land Act, 1892").

Contributions to be made by a body in whom Reserves are vested.

In the case of roads on Education Reserves, "The Education Reserves Act, 1905," empowers School Commissioners to pay or contract to pay in any manner they think fit out of revenue derived from such reserves the whole or

Contributions by School Commissioners from endowments.

any part of the cost of constructing or improving any road, bridge, ferry, or ford necessary to the leasing or subdivision of land vested in the Commissioners, provided that the work is approved by the Minister for Education.

Contributions
by School Com-
missioners from
Gold Revenue.

The School Commissioners may also pay to the local authority the whole or any part of any revenue received by them from the Receiver of Gold Revenue within whose district is situated any reserve in respect to which such revenue has accrued, and the local body is to expend the money on the maintenance or construction of such roads, bridges, ferries, or fords as may be agreed upon between the School Commissioners and the local authority; or, in the absence of such agreement, as the local authority thinks fit (see Section 3 of "The Education Reserves Act, 1905").

Contributions
from Revenue
from Timber
and Flax on
Crown Lands.

By "The Timber and Flax Royalties Act, 1905," it is provided that one-half the revenue received by the Receiver of Land Revenue in respect to royalty for cutting timber or flax on Crown lands is to be paid to the local body within whose district the timber or flax is obtained and the revenue is derived; but if there is no local authority in the district, then the money is to be spent under the direction of the Minister of Lands or of such person as he shall appoint. It must be noted that this provision only applies to royalties from timber and flax on Crown lands, and does not apply to such royalties if they arise from State forest reserves.

Money to be
spent on roads
only.

The money is to be expended exclusively in the construction, repairs, or maintenance of roads, and the particular works are to be approved by the Land Board before the money is paid over to the local body; and if the money is not applied to such works by the local body, it may be recovered from such local body by the Colonial Treasurer as a debt due to His Majesty, or it may be deducted from subsidy. Application for the money should be made by the local body quarterly on the 1st February, May, August, and November in each year to the Receiver of Land Revenue for the district, but the local body should first of all submit for the approval of the Land Board a scheme of works upon which they propose to expend the money.

TOLLS.

A Road Board or other local authority having the care and control of a road or ferry, may cause tolls to be collected upon such road or ferry; and, for that purpose, may, by Section 156 of "The Public Works Act, 1905," do the following things:—

Power to collect tolls.

- (a) May appoint and discharge collectors of tolls.
- (b) May place on the road toll-houses, gates and bars, ferry-houses, and posts and other things necessary for working a ferry, and provide boats and punts for the use of any ferry.
- (c) May from time to time fix the scale of tolls to be collected at any toll-gate or ferry upon all persons, cattle, or vehicles passing the same, and may revoke or alter such scale.

But no toll-gate can now be established within one mile from the boundary of any borough, except for a ferry, but this provision does not affect the power which a Borough Council has, under Section 256 of "The Municipal Corporations Act, 1900," to establish a toll on a bridge or ferry.

No toll-gate within one mile of Borough

Before any toll can be legally demanded, the following conditions must be observed, that is to say:—

Conditions upon which toll may be demanded.

- (a) The scale of tolls must be publicly notified for fourteen days before becoming first payable.
- (b) The name of the toll-gate or ferry, and the name in full of the collector, and the scale of tolls, must be painted in black letters not less than two inches in length on a white board, and must be placed in a conspicuous place on or near the toll-house or ferry-road, so as to be conveniently read by every person from whom a toll is demanded (see Section 157 of "The Public Works Act, 1905."

The following persons, cattle, and vehicles, and every animal and vehicle employed solely in carrying such persons, or their tools and material, are exempt from tolls:—

Exemptions from tolls.

- (a) The Governor, and every person in attendance on the Governor.

- (b) Every member of any military, militia, or Volunteer force, or Permanent Militia, when on duty, or going to or returning from parade, and in the uniform (if any) of his corps.
- (c) Every policeman and constable on duty, and every prisoner in his custody.
- (d) All passengers by any public conveyance (but this exception does not apply to such passengers at any ferry at which tolls are lawfully taken from foot-passengers).
- (e) Every child going to or from school.
- (f) All cattle the property of any person residing within one mile of a toll-gate, going to or from water or feed.
- (g) Every animal and cart employed solely in drawing manure.
- (h) Every person or vehicle, and all cattle, in respect of whom or which toll has been paid at the same toll-gate at any time since the midnight previous.

No: to apply to ferry.

But the three last-mentioned exceptions do not apply to tolls payable at a ferry.

Penalty for falsely claiming exemption.

Any person who falsely claims exemption from toll is liable to a fine of not less than two nor more than five pounds, and the proof of being exempt lies with the person claiming to be so (see Sections 158 and 159 of "The Public Works Act, 1905").

Power to let or farm out tolls.

The Road Board or other local authority having control of a toll-gate or ferry may let or farm the tolls payable thereat, together with the buildings and other things belonging thereto, on the following conditions:—

- (a) Such letting must be for a period not exceeding one year.
- (b) Such letting must be by public auction or sealed tenders, after due public notice given.
- (c) Security in two good sureties must be given for the rent to be paid.

- (d) The scale of tolls cannot be altered during such lease without the consent of the lessee, except under the provisions of Sections 171 to 173 of "The Public Works Act, 1905," which give the County Council or the Governor power to abolish or reduce the tolls if they are found to be excessive.

If any person refuses to pay a toll for which he is liable, the toll-keeper may seize and distrain any cattle or vehicle on account of which such toll is payable, or any goods or chattels carried in such vehicle or on such cattle; and unless the toll, with reasonable charges for the seizure and distress, and for the maintenance of such cattle is paid within four days, the toll-keeper may sell such cattle, vehicle, goods, or chattels by public auction, and apply the proceeds of such sale in the payment of such toll and charges, but he must pay the residue (if any) to the owner on demand. The toll-keeper may, instead of making such seizure and distress, recover from any person refusing to pay a toll for which he is liable the amount of such toll, together with such compensation for loss of time in recovering the same as the Court hearing the case determines (see Sections 160 to 162 of "The Public Works Act, 1905").

Any person who leaves a road and returns thereto within three hundred yards on either side of any toll-gate, so as and with the intent to evade paying toll, is liable to a fine not exceeding five pounds for each such offence, and any person who attempts by force to evade the payment of any toll, or resists or obstructs any toll-keeper in the execution of his duty, is liable to a fine not exceeding twenty pounds; and any person who hires or plies for hire in any boat or punt, or by any means of any mode of conveyance whatever, across any river, stream, or creek within half a mile in a straight line from any public ferry in working order, or bridge open for traffic across the same, at which tolls are payable, is liable to a fine not exceeding five pounds for every such offence (see Sections 163 to 165 of "The Public Works Act, 1905").

Liability of
toll-collector

If any toll-collector does any of the following things, he is, under Section 166 of the same Act, liable to a fine not exceeding five pounds. That is to say if he:—

- (a) Demands a larger toll than that which is payable by law;
- (b) Does not maintain the board required by Section 157 of "The Public Works Act, 1905," in a legible condition;
- (c) Refuses, when required so to do, to give his name, or gives a false name, to any person of whom he has demanded a toll;
- (d) Is drunk when in discharge of his duty;
- (e) Obstructs any person in passing when the lawful toll has been tendered;
- (f) Uses any abusive or offensive language to any person passing.

Toll at one gate
may clear
another gate.

The Road Board or other local authority having control of a toll may make any toll-gate in its district clear any other toll-gate in the district; and the County Council may by an order declare, or any two or more local authorities of districts within the County may agree, that any toll-gate in any such district shall clear any toll-gate in any other such district; and if this be done, then no toll is payable at a gate so cleared by any person showing the ticket hereinafter mentioned. Whenever any toll-gate clears any other toll-gate in the same or any other district, the words "Clears the (naming the toll-gate cleared) Gate" must be painted upon the board at the toll-gate already mentioned (see Sections 167 and 168 of "The Public Works Act, 1905").

Toll-keeper to
give ticket.

Any person passing through a toll-gate may demand from the collector a ticket showing that he has passed the gate on that day, and if the collector refuses to give such a ticket on demand, he is liable to a fine not exceeding five pounds; but if any person with intent fraudulently to evade any toll, transfers such a ticket to another person, or uses a ticket so transferred, or alters or forges such a ticket so as and with intent fraudulently to evade any toll, he is liable to a fine not exceeding five pounds (see Sections 169 and 170 of "The Public Works Act, 1905").

If the Governor-in-Council or the County Council is of opinion that any toll-gate within a county is not necessary, or that the road in respect of which the tolls are taken is not kept in proper repair, or that the tolls are excessive and unduly burdensome, the Governor-in-Council or the County Council may, after due inquiry into the case, by an order publicly notified, abolish such toll-gate, or may direct the local authority having control thereof to diminish the tolls taken thereat, and such toll-gate must thereafter be abolished, or the tolls thereat must be diminished, in compliance with such order; but the provision does not deprive the lessee of such toll-gate of the right which he may have of compensation for any loss which he may sustain by the abolition or reduction of the toll (see Section 171 of "The Public Works Act, 1905").

The property in all toll-houses, gates, fences, buildings, and appurtenances connected therewith, and all ferries, and all materials, tools, and implements, which are provided for constructing, repairing, or maintaining a district road, or bridges or ferries thereon, which are under the control of a Road Board is by Sections 144 and 145 of "The Road Boards Act, 1882," vested in such Road Board.

GATES ACROSS ROADS.

A Road Board is empowered, by Section 139 of "The Road Boards Act, 1882," to authorise, by writing, any person to erect a swing-gate across any district road, and the same enactment gives the Board power to order the removal of the gate at any time. The general provisions of law as to the erection, maintenance, and removal of gates are, however, to be found in "The Public Works Act, 1905," and as that is the later enactment it must be assumed that it is complementary to, and that it overrides any provisions in "The Road Boards Act, 1882," that are antagonistic thereto. Sections 123 to 126 of "The Public Works Act, 1905," contain the following provisions on the subject:—

- (a) The Minister for Public Works, the Road Board, or any other local authority respectively having the control of any road in a sparsely populated district may, by writing, permit any person to

County Council or Governor-in-Council may abolish or reduce toll.

Toll houses and materials on roads, etc., vested in Road Board.

Power to authorise erection of gate.

Permit to be in writing.

erect a swing-gate, including a rabbit-proof swing-gate, across such road; but the Minister, the Road Board, or other local authority, as the case may be, may, notwithstanding such permission, cause such swing-gate to be removed at any time, without payment of compensation to the person who may have erected the same, or to any person deriving benefit therefrom.

Agreements for sale of land for road may provide for swing gates.

(b) In the case of any road which has been or may be taken or constructed through private lands under agreement with the owner thereof, the Minister, Road Board, or local authority, as the case may be, may agree with the owner or lessee of such lands to permit a swing-gate to be erected across such road at the outer boundaries respectively of such lands at the cost of one or both parties as may be agreed, there to be maintained at the like cost for any period not exceeding twenty years, or until such road has, within such period, been fenced on both sides.

Notice of application for swing-gate to be published.

(c) Permission to erect a swing-gate across any road cannot be granted unless and until after notice of any application in that behalf has been given at least once in each of two consecutive weeks in some newspaper circulating in the district, and the cost of all such notices must be defrayed by the person applying for such permission. The conditions herein, as to the publication of notice, are held to refer only to a case where a person applies for permission to erect the gate, and that it does not apply to a case where, in acquiring land for a road, the Minister or local body has agreed that permission shall be given to erect and maintain the gate for a definite time not exceeding twenty years; neither does the condition apply to the cases covered by the next paragraph.

- (d) Every owner of land through which a road has been taken and registered under Paragraph (d) of Section 101 of "The Public Works Act, 1905," or of Section 100 of "The Public Works Act, 1894," has a right, whenever such road crosses the boundary of his land, to erect a swing-gate on the formed portion thereof, not less than ten feet wide, to fence up to such gate, and to maintain such gate and fences for a period of twenty years from the date of such registration, but every such gate must be constructed and maintained to the satisfaction of the Commissioner of Crown Lands for the district.

Right of land owner in certain cases to erect swing-gates.

The cases in which this special provision applies are those where the land owner may have allowed the public to use a road through his land, or has also allowed the Government or the local body to expend public money on improving or constructing the road, or he has fenced it off, and thereafter the road has been legalised without payment of compensation to the owner under the statutory provisions referred to above.

Cases in which such right accrues.

In every case where a gate is erected across a road under any of the circumstances mentioned in any of the foregoing paragraphs, a board with the words "Public Road" legibly painted thereon in letters of not less than three inches in height must be fixed upon each side of such gate, and at all times maintained thereon by the person or body authorised to erect such gate, or at whose cost it has been agreed that such gate is to be erected and maintained. The Minister for Public Works, or local authority, as the case may be, has power to make by-laws providing penalties for leaving any such gate open, or for damaging the same, and every person who damages any such gate, or any fence authorised to be erected across any part of a road in connection therewith, is liable to the person or body authorised to erect such gate or fence, or at whose cost it has been erected, and the gate or fence is the property of such person or body (see Section 127 of "The Public Works Act, 1905").

Words "Public Road" to be painted on every swing-gate.

Penalty for leaving gate open.

Section 26 of "The Fencing Act, 1895," also imposes penalties on persons who leave gates open on roads. The provisions of that section will be found set out in a subsequent paragraph dealing with gates in rabbit-proof fences on roads.

Gates on roads adjacent to railway.

There are special conditions in Section 9 of "The Government Railways Act, 1900," which regulate the erection and maintenance of gates on roads that are adjacent to or that cross a railway, and these conditions override the general law on the subject contained in "The Public Works Act, 1905," already mentioned. These conditions provide with respect to every Government Railway that:—

Gate not to be within five chains of centre line of railway.

(a) It is not lawful to erect or maintain across a road that crosses a line of railway on the level any gate within five chains of the centre line of such railway; but the Minister for Railways, if he thinks fit, may in any case where there are no cattle stops at such level crossing, agree with the local authority having the control of such road to allow any such gate to be erected or maintained, under such conditions as in the interests of public safety he thinks fit to impose.

Gates not to be erected at private crossings if there be cattle stops

(b) At private level crossings where there are cattle stops it is not lawful to erect gates so as to enclose the railway, and where there are gates connected with the fencing, which encloses any railway, cattle stops are not allowed in the line of railway.

Penalty for erecting gate contrary to law.

(c) If any gate is erected in breach of the Act, then, irrespective of all other liabilities to which the person or local authority erecting the same is thereby exposed, the gate may, at the cost and expense of such person or authority, be at any time removed by the Minister for Railways, or by any Manager or Engineer of the railway without any notice.

Gates in existence in 1900, power to remove gate.

The Act also applies to gates which were in existence on roads at the time of the passing of the Act, and if notice to remove the gate is given by the Minister of Railways or by any Railway Manager or Engineer to the person or

authority who erected the gate, the same may be removed within forty-eight hours, and if this is not done the gate may be removed at the expense of the person or authority who erected it.

There were also special conditions as to gates in rabbit-proof fences where such fences cross a road or bridge. These conditions are contained in "The Rabbit Nuisance Act, 1890," and in "The Fencing Act, 1895." Section 5 of "The Rabbit Nuisance Act, 1890," provides that:—

- (a) The Minister, or any Board of Trustees, or any person who has erected or may erect any rabbit-proof fence on Crown lands, or lands belonging to any local authority or public body, or private lands for purpose of preventing the spread of rabbits, shall be deemed to have and always to have had authority to enter upon any district or county roads traversing the line of any such fence, or bounding any such lands, and to continue the construction of such fence across any such road or any bridge on such road, with swing-gates, but so as not to unnecessarily interfere with public traffic; subject, however, that a board with the words "Public Road," and the penalties herein provided for leaving open any swing gate legibly painted thereon shall be fixed to each side of such gate, and shall at all times be maintained thereon by the persons erecting such gate.
- (b) But no private person shall hereafter erect any such swing-gate without first obtaining the sanction of the local authority having the control of the road over which it is to be erected.
- (c) Every person who, whether using the road or bridge as a highway or not, leaves open any swing-gate in a rabbit-proof fence, or after passing through such gate, does not close it, shall be liable on summary conviction to a penalty not exceeding five pounds for every such offence.

Gates in rabbit-proof fences.

Rabbit-proof fences and gates on roads, bridges, etc.

Sanction of local authority to erection of gate.

Penalty for leaving gate open.

Provisions as to gates in rabbit-proof fences override the general law.

These provisions override the general law as to gates contained in "The Public Works Act, 1905," but those in "The Fencing Act, 1895," do not, and as the last-named Act was passed subsequently to "The Rabbit Nuisance Act, 1890," it would seem that Paragraph (b) above must be read subject to Section 26 of "The Fencing Act, 1895," which provides that:—

Gates across roads and bridges under Public Works Act.

(a) Subject to the provisions of "The Public Works Act, 1894" (now 1905) relating to gates across roads, the local authority may by writing permit any person to erect a swing-gate or rabbit-proof gate, properly hung, and provided with an efficient fastening capable of being opened by a person on horseback, across any road or bridge, and such permission shall remain in force during the pleasure of such local authority.

Penalty for leaving such gate open.

(b) Every person who damages or leaves open any swing-gate erected on a road or bridge, or in any rabbit-proof fence, or who after opening such gate does not close it, is liable to a penalty not exceeding five pounds for every such offence, and is also liable to the person who erected such gate for all such damage as aforesaid.

Application to bridges.

(c) The provisions of the said Act (*i.e.*, the Public Works Act), relating to gates across roads shall, for the purposes of this Act, apply also to gates across bridges.

REMOVAL OF GATES, FENCES, AND OBSTRUCTIONS ON ROADS.

Summary removal of gate across road.

Section 128 of "The Public Works Act, 1905," provides a summary way whereby the public may compel the removal of a gate, fence, or other obstruction on a road, that is, or has become, a public nuisance; and it would appear that this provision is effective even in cases where the gate or fence has been erected across the road by permission of the Minister for Public Works, or local authority; but it is assumed that where the gate has been erected under an agreement between the Minister, or local body, and the land owner, on the sale

of land for the road, or where his land has been taken from him without payment of compensation, Sections 124 and 126 of the Act would be sufficient authority for the maintenance of such gate; but if the Stipendiary Magistrate should hold that it is not sufficient, and if he should order the removal of the gate, then it would appear that the land owner would have an equitable claim for compensation against the Minister or local authority.

Section 128 of the Act provides that "if at any time upon petition of any five or more ratepayers, it is shown to the Road Board or other local authority having the control of any road that any gate, fence, or other obstruction erected or placed upon or across such road is or has become a public inconvenience, such local authority must forthwith serve notice in writing on the owner or occupier by whom or at whose instance the same was erected or placed as aforesaid, ordering the removal thereof within a time (not exceeding sixty days) to be appointed in such notice.

Petition by five ratepayers.

The Act also provides that if after receipt of such petition the local authority declines or neglects to issue a notice as aforesaid, then any ratepayer may, by complaint under "The Justices of the Peace Act, 1882," require the local authority to appear before a Stipendiary Magistrate to show cause why such notice should not issue, and on the hearing of the complaint the Magistrate, whose decision is final, is empowered to decide whether such notice should or should not issue, and the local authority must act accordingly.

If local authority fail to give relief, complaint to be made to Magistrate.

If such notice is issued and served as aforesaid, and default is made in duly complying therewith, the defaulting owner or occupier is liable to a fine of one pound per day for every day during which such default continues, and the local authority or any ratepayer may then remove such gate, fence, or other obstruction, and may recover from such owner or occupier as a debt the cost of such removal.

Penalty for non-compliance with Magistrate's order.

These provisions do not, however, apply to any swing-gate erected across any road under the authority of any Act relating to the abatement of the rabbit nuisance, if the local authority is of opinion that such gate is necessary for the purposes of such Act.

Act not to apply to rabbit-proof gates.

INJURIES TO AND NUISANCES ON ROADS.

Injuries to and nuisances on roads may, for the most part, be restrained under the provisions contained in "The Police Offences Act, 1884," and its amendments, or under the powers relating to offences contained in Section 153 of "The Public Works Act, 1905," as already discussed in a previous chapter; but, in addition to these provisions, a Road Board, or other local body, or even a private person in certain cases, has other powers of restraining injuries to roads or of compelling the abatement of a nuisance thereon.

A public or common nuisance is an offence against the public, committed either by doing a thing which tends to the annoyance of all the Queen's subjects, or by neglecting to do a thing which the common good requires (see Law of Highways, Glen, 1897, p. 183).

The original method of restraining injuries and of abating nuisances on roads was by indictment or by forcibly removing the obstruction, and it would appear that, in addition to any statutory provisions on the subject, the Supreme Court of New Zealand still has the power to restrain injuries to or nuisances on roads, and that an injunction will lie in such a case (see the *Solicitor-General v. Bartlett*, 18, N.Z.L.R., 142).

In that case the Chief Justice stated that although "other proceedings could have been taken, and proceedings in an inferior Court, and in a different form, yet the fact that such could have been taken does not deprive the Supreme Court of its jurisdiction in such a case." This method is perhaps the best one to resort to when the title to the road is in dispute, or where it is doubtful if the road is a public road, or where the party doing the injury is not worth suing for damages, as the Supreme Court can deal with the whole matter in one action; whereas this cannot generally be done in an inferior Court, but each case should be considered on its merits, and the appropriate remedy sought for. See *Cherry v. Snook* (12, N.Z.L.R., 54); *Martin v. Cameron* (12, N.Z.L.R., 769); *Hughes v. Boakes* (17, N.Z.L.R., 113; 1, Gaz. L.R., 122).

Restraint of injuries and nuisances.

Definition of nuisance.

Original relief by indictment or by removal of obstruction.

Supreme Court may issue injunction.

In "Glen's Law of Highways," 1897, p. 207, it is stated "that according to some old decisions, if there be an obstruction to a way, as a gate newly erected across it, though the gate may be opened and a passage obtained, yet the obstruction may be forcibly removed by any person, and the removal justified." Forcible removal of obstruction.

This, however, is not now the law, and neither a local body (unless acting under some statutory authority) nor a private person can remove an obstruction to a road in this rough and ready fashion, unless the obstruction causes it or him some special damage; and even then, if he could avoid it by reasonable convenience, he cannot forcibly remove it. The English law on the subject, and which is also apparently the view taken by the Courts in this colony, is stated in "Glen's Law of Highways," 1897, p. 207, as follows:— Remedy not now available except in case of special damage.

"It is now held that an individual who is only injured as one of the public can no more proceed to abate the nuisance than he can bring an action (*i.e.*, he can only bring an action if he is specially injured). And a person cannot at his pleasure go into a public highway and remove an obstruction which may happen to be there. He must show necessity for his going over the part obstructed."

Per Lord Campbell, C.J.:—

"If there be a nuisance in a public highway, a private individual cannot of his own authority abate it unless it does him a special injury, and he can only interfere with it as far as is necessary to exercise his right of passing along to the highway; and, without considering whether he must show that the abatement of the nuisance was absolutely necessary to enable him to pass, we clearly think that he cannot justify doing any damage to the property of the person who has improperly placed the nuisance in the highway, if, avoiding it, he might have passed on with reasonable convenience." Private person can only remove obstruction if it does him special damage.

And per Blackburn, J.:—

“ We are all agreed that where a person attempts to justify an interference with the property of another in order to abate a nuisance, he may justify himself as against the wrongdoer, so far as his interference is positively necessary. We are also agreed that, in abating the nuisance, if there are two ways of doing it, he must choose the least mischievous of the two. We also think that if, by one of these alternative methods, some wrong would be done to an innocent third party, or to the public, then that method cannot be justified at all, although an interference with the wrongdoer himself might be justified.”

The interference must be positively necessary.

Person by whom indictment may be preferred.

An indictment for any encroachment or nuisance upon a highway which is indictable at common law may in England be preferred either by one of the general public, who is obstructed on the highway, or it may be preferred by the Surveyor of Highways, or Highway Board, or any other highway authority whose duty it is to preserve the highways within their jurisdiction free from obstruction or nuisances (see “The Law of Highways,” Glen, 1897, p. 214), and this provision, subject to the preceding paragraph is, it appears, applicable in New Zealand. See *Mayor of Kaiapoi v. Beswick* (1, C.A., 192); *Hume v. The Taieri and Peninsula Milk Supply Company* (8, N.Z.L.R., 713); *Solicitor-General v. Bartlett* (18, N.Z.L.R., 142; 1, Gaz. L.R., 271).

Example of case where fence on road destroyed by private persons.

The case of *Hughes v. Boakes and another* (17, N.Z. L.R., 113; 1, Gaz. L.R., 122), arose out of the action of defendants in pulling down a fence erected by plaintiff on land which he claimed as his own, but judgment was given for defendants on the ground that the land was a public road, thus justifying defendants in their action.

Obstruction on road by natural causes may be removed.

Under the general powers that any one has to remove an obstruction to a road whereby special injury is caused to him, would come the power for any person travelling along a road and being blocked by a fallen tree, or by a slip, to remove the same in order to get past, but this would give-

him no power to remove the timber or material from the road for his own use or profit. He must also take care that in removing the obstacles he does so in such a manner as not to cause injury to anyone else, otherwise he may find himself liable.

Many things which could formerly be restrained by injunction, under the plea of "nuisance," such as damage to roads by extraordinary traffic, or other improper use of roads, can now be restrained under the provisions of "The Police Offences Act, 1884," and other Acts mentioned in a previous part of this work. Some other damages to roads, or improper use of roads that are in the nature of "nuisances," can be restrained or regulated under "The Public Works Act, 1894," etc., as will be set forth hereinafter.

Section 145 of "The Public Works Act, 1905," provides that "Every person who, without lawful authority or the written permission of the local authority having the control or a road,

Things formerly restrained by injunction now restrained by statute.
Provisions of Public Works Act as to obstructions or nuisances on roads.

- (a) Encroaches on the road by making or erecting any building, fence, ditch, or other obstacle, or planting any tree or shrub, thereon;
- (b) Leaves on the road any timber, stones, or other material so as to obstruct or endanger persons using the road;
- (c) Digs up, removes, or alters in any way the soil or surface or scarping of a road;
- (d) Fills up, alters, or obstructs any ditch or drain, whether on the road or elsewhere, made by or under the control of the local authority to carry water off the road;
- (e) Allows any water, tailings, or sludge, or any filthy or noisome matter, to flow from any building or land in his occupation on to the road, or into any ditch or drain declared to be a public drain;
- (f) Causes or allows any timber or other material, not being wholly raised above the ground on wheels, to be dragged on the road,

Penalty. shall be liable to a fine not exceeding ten pounds for every day upon which such offence is committed or suffered to continue, and to a further sum equal to the cost incurred by the local authority in removing any such encroachment or obstruction, or in repairing any injury done to any road, ditch, or drain as aforesaid.

Complaint to be made by local authority.

Provided that no fine shall be imposed unless the information or complaint is laid by authority of the local authority or of the chairman thereof.

Power to restrain the improper occupation of a road.

In addition to the power to restrain the improper occupation or use of a road by injunction, Section 275 of "The Public Works Act, 1905," provides that when any person is in occupation of any land reserved, acquired, or taken or to be reserved, acquired, or taken for any public work, without any right, title, or license, or whose right, title, or license has expired or been forfeited, or cancelled, and whether such land is within or outside of any mining district, the Minister of Lands, or the Minister for Public Works, or any person appointed in writing by either or both, may enter a plaint in the Magistrates' Court nearest to the place where the land lies to recover possession thereof; and the jurisdiction of the Court or Magistrate shall not be ousted on the plea that a question of title is involved in any such case, or that the value of the premises, possession whereof is sought to be recovered, is above the ordinary or extended jurisdiction of such Court or Magistrate.

Court may order possession to be given.

If upon the hearing of such plaint the defendant does not appear, or appears, but fails to establish in himself an absolute right and title to the possession of such land, or if upon such hearing it is shown to the satisfaction of the Court that the title under which the defendant claims has, as between himself and the Crown, expired or become liable to forfeiture or cancellation, the Court shall declare such title to be extinguished, and may order that possession of the said land be given by the defendant to the plaintiff, either forthwith or on or before such day as the Court thinks fit to name, and that the defendant do pay the costs.

If delivery of the land is not made in pursuance of such order, the Court, or Magistrate, or any Justice of the Peace, may issue a warrant authorising and requiring the bailiff of the Court, or any constable, to give possession of such land to the plaintiff, and the provisions of Sections 181, 182, 186, and 187 of "The Magistrates' Courts Act, 1893," apply to any proceedings taken under this section.

Penalty for refusing to give such possession.

The power to prevent persons obstructing servants of the Government or of local bodies in the exercise of their duties on roads, and also to prevent the destruction of a fence upon a road, is contained in Section 276 of "The Public Works Act, 1905," which provides that:—

Obstructing servants of local authority or Government and preventing destruction of fence on road.

"Every person who wilfully obstructs any engineer, overseer, workman, or other person in the performance of any duty, or in doing any work which he has lawful authority to do under the provisions of this Act, or wilfully and unlawfully cuts down, breaks, removes, or destroys any fence in or upon any land taken under the provisions of this Act, shall be liable to a fine not exceeding fifty pounds for every such offence."

Obstructing engineer and workmen, etc., in performance of their duty.

Any person who wilfully damages a bridge may be proceeded against under the powers contained in Section 277 of "The Public Works Act, 1905," which enacts that:—

Wilfully damaging building or bridge.

"Every person who wilfully and unlawfully cuts down, breaks, removes, or destroys any building or bridge in or upon any land taken under the provisions of this Act, shall be liable to be imprisoned for any term not exceeding two years, with or without hard labour."

The discharge of tailings or mining debris within five chains of a bridge can be restrained under the powers contained in Section 287 of "The Public Works Act, 1905," which provides that:—

Discharging tailings, etc., near bridge.

(1) Notwithstanding anything to the contrary contained in "The Mining Act, 1898," or any amendment thereof, or in any other Act, or in

any Proclamation or Order-in-Council issued thereunder respectively, it shall not be lawful for any company or person constructing any tailrace to discharge, or cause to be discharged, any tailings, mining debris, or waste waters into any watercourse at any point or place within five chains from any bridge (or such shorter distance as in special instances may be prescribed by the Minister for Public Works, or the local authority, as the case may be, having the control of such bridge) in such manner as to directly injure any such bridge.

(2) For the purposes of this section, "bridge" means any bridge or the approaches thereto, open to the public or used for any railway or public tramway, or in connection with any public work whatsoever.

(3) Every company or person committing a breach of the provisions of this section shall be liable as for committing an injury to a public work, and may be proceeded against accordingly.

Penalty.

Tree or hedge
overshadowing
road may be
removed.

A local body may compel any person who allows a tree or hedge to overshadow a road to remove the same, and Section 146 of "The Public Works Act, 1905," contains the following provisions on the subject.

In any case where trees or hedges growing on land within the district of a local authority overshadow any road or street in the district so as to be detrimental to the maintenance of such road or street, the local authority may, by notice in writing served on the occupier, or, if there is no occupier, or if the occupier is unknown, or cannot be found, then on the owner of the land, require him to remove, lower, or trim such trees or hedges to the satisfaction of the local authority within two months after the service of the notice; and with respect to such notice the following provisions shall apply:—

Notice to be
served.

(a) Within ten days after the service of the notice such occupier or owner may, by complaint under "The Justices of the Peace Act, 1882," require

the local authority to appear before a Stipendiary Magistrate to show cause why the notice should not be set aside.

- (b) On the hearing of the complaint the Magistrate, Magistrate to decide. whose decision shall be final, shall decide whether the notice should or should not be set aside, and in the former case the notice shall be deemed to be void.
- (c) In the case of a notice which is not set aside as Penalty for failure to comply with Magistrate's order. aforesaid, if the occupier or owner fails to duly comply therewith within two months after the service thereof, or within two months after the Magistrate's decision, whichever period is the later, he is liable to a fine not exceeding one pound for every day thereafter during which such failure continues; and the local authority may cause the land to be entered upon and the work to be done at his cost and expense in all things.

In addition to the power contained in Section 3 of Noxious weeds on roads. "The Noxious Weeds Act, 1900," whereby the occupier of land is required to clear noxious weeds from half the width of any road fronting thereon, Sections 147 to 149 of "The Public Works Act, 1905," also give similar power to require an occupier (and if there be no occupier, then the owner) to remove gorse, sweetbriar, blackberry, acacia, broom and fennel from the road frontage. This last provision is even more effective than that contained in the Noxious Weeds Act, because gorse, acacia, broom and fennel are not necessarily noxious weeds under that Act unless made so within the meaning of that Act.

The provisions of "The Public Works Act, 1905," as Provisions of Public Works Act to this matter are as follows:—

Section 147 of the Act provides as follows:—

- (1) The local authority may order the occupier, or, in Occupier or owner liable. case there is no occupier, then the owner, of any land abutting upon any road under its control—

Tree or hedge to be trimmed or removed.

(a) To remove any part of a tree, or lower or trim any part of a hedge overhanging the road so as to injure such road or obstruct the traffic thereon, or obstructing any ditch or drain appertaining thereto; and

Owner liable to cut down all plants from half the width of road fronting his land.

(b) To cut down, or grub up, as the local authority may direct, and remove all obstructions to traffic or drainage, arising from the growth of plants upon such road, up to the middle line of such road, along the whole frontage of the land occupied or owned by him.

Penalty for failure to comply with order.

(2) In the event of any such occupier or owner failing to comply with such order within two months from the service thereof, he shall be liable to a fine not exceeding one pound for every day during which such order is not obeyed, and a further sum equal to the cost incurred by the local authority in removing such tree, or lowering or trimming such hedge, or cutting down or grubbing up and removing any such plants then growing on such road; and the said cost shall be a charge on the land, and may be recovered by the local authority, as rates are recoverable by the local authority under any rating Act for the time being in force in the district of the said local authority.

Act retrospective.

(3) The powers given to the local authority under this section may be exercised by the local authority irrespective of the fact that the obstruction existed before the passing of this Act.

Definition of "cut down."

(4) "Cut down" in this section means cutting down and keeping cut down the stem and root of any plants so as to prevent their throwing out any leaf, offshoot, or flower.

Definition of "plants."

"Plants" means and includes gorse, sweetbriar, blackberry, acacia, broom and fennel.

Section 148 of the Act also provides:—

Service and particulars of notice.

(1) When, under the provisions of the last preceding section, an order is made by a local authority,

such order shall be in writing, signed by any person appointed, either generally or specially, by the local authority for the purpose of giving such notices, and shall be delivered to the person liable, either personally or by leaving the same at or posting the same in a registered letter addressed to his last known place of abode or business in New Zealand; and it shall not be necessary to prove the actual receipt of such order by the person to whom it is addressed.

- (2) If any person upon whom such order should be served is unknown, or after due inquiry cannot be found, or is absent from New Zealand, then a service upon his known agent or attorney shall be deemed a sufficient service. Service on agent sufficient
- (2) If such person has no known agent or attorney in New Zealand, or such agent or attorney cannot after due inquiry be found, then a publication of such order in a newspaper circulating in the district in which such order is issued, and affixing a copy of the order upon a conspicuous part of the property in respect of which such order is issued, or on some public road adjacent thereto, shall be sufficient service. Service in case where owner or agent is unknown.
- (4) The cost of publishing such notification shall be a charge upon the land, and shall be recoverable by the local authority in the same manner as rates are recoverable by it under any Rating Act for the time being in force in the district of the local authority. Costs of notice a charge on the land.

The power to restrain any one from throwing trimmings of trees and hedges, or any gorse or rubbish, on public roads is contained in Section 149 of the Act, which states that if any person throws, or causes to be thrown, the trimmings of any hedge or tree, or gorse, sweetbriar, blackberry, broom, or other rubbish upon any road, and neglects to remove the same within two weeks from the receipt of an order so to do from the local authority having control of Restraining throwing trimmings of trees or hedges, etc., on roads.

the road, the local authority may cause such trimmings, gorse, sweetbriar, blackberry, broom, or other rubbish to be removed; and the cost of the removal of the same, and all expenses attendant thereupon shall be recoverable accordingly from such person by the local authority.

LEVEL OF ROAD CROSSING BOUNDARY OF DISTRICT.

Local Authorities of both districts to agree.

Where a road crosses the boundary of a district, or meets another road on such boundary, it is not lawful to alter the level of such road or roads at such point of crossing or meeting unless both parties having control of the roads respectively agree as to the new level at such point (see Section 114 of "The Public Works Act, 1905").

SELLING TIMBER, STONE, &c., ON ROAD.

Power to sell stone, etc.

A Road Board, County Council, or other local authority may be empowered by the Governor under Section 122 of the same Act to sell, or contract to sell, and remove any timber, stone, material, metal, or other substance upon or under any land vested in it or placed under its control for a public road or other public work. The authority to do this will not, however, limit the liability of the local authority in respect to damage to person or property by reason of the removal of such timber, stone, mineral, metal, or other substance.

CASES WHERE OWNERS OF ROADS OR STREETS CAN COMPEL LOCAL BODY TO FORM SAME.

Power of owners to compel Local Body to form road or street.

A very useful provision is contained in Section 3 of "The Public Works Act Amendment Act, 1905" (No. 10), in respect to unformed roads and streets. This section, as amended by Section 9 of "The Public Works Act Amendment Act, 1906," enacts that, on the petition of a majority of the owners owning not less than two-thirds of the frontage of any unformed road or street of not less width than sixty-six feet, which had, prior to 1900, been dedicated or used as a public road or street, the local authority may form the same and apportion the cost thereof among the owners in proportion to the frontage held by them respectively, and may recover the amount so apportioned as if it were a rate.

BY-LAWS AS TO USE OF ROADS.

A Road Board in a County where "The Counties Act, 1886," is not in operation, has equal power with a County Council to make by-laws under Section 311 of "The Counties Act, 1886," regulating traffic on public roads, and for inspecting and licensing vehicles, etc (see Section 141 of "The Public Works Act, 1905"), and in addition thereto the last-mentioned section gives such a Road Board power to fix times during which horses or cattle not in harness or yoke, or sheep, goats, or pigs, may not be driven over any county or district roads lying within three miles from the outer boundaries of any borough or town district, or over certain such roads named in any by-law in that behalf, and any such by-law may be made in respect of any county road notwithstanding the provisions of any Act whereby the control of such road is vested in the Governor.

Regulating traffic on roads, inspecting vehicles, etc.

Section 311 of "The Counties Act, 1886," referred to above, gives power to make, alter, or repeal by-laws on the following subjects:---

Power to make by-laws

To provide for the inspection of all public vehicles, and to prevent the use of such as are unsafe or insufficient.

Inspection.

To provide for the licensing and numbering of all vehicles plying for hire for the carriage of passengers or of goods within the county, and to prevent unlicensed vehicles so plying.

Licensing.

For regulating the number of passengers and the quantity and weight of goods which may be carried in each such vehicle, either with regard to the construction and dimensions thereof, or the number of horses required to draw the same, and to prevent such number, quantity, or weight being exceeded.

Passengers and goods.

For regulating the manner in which the number of each vehicle, or the number of passengers, or the quantity or weight of goods it is licensed to carry, or the scale of fares for the use thereof, shall be shown upon or in the same.

Number of vehicle or passengers.

Name of owner.	To prescribe whether and how the name of the owner of any such vehicle shall be shown thereon.
License fees	For appointing the several sums to be paid to the County Fund for the licensing of vehicles, as herein mentioned.
Lights	To prescribe the lights to be carried by every vehicle, public or private, within the County, and their position on the vehicle.
Weight of load or number of animals.	For regulating either in proportion to the weight of load or the number of animals employed, the width of the tires of wheels which shall be used by all vehicles, whether plying for hire or not, within the County.
Weight of engine or vehicle.	For regulating the weight of any engine, agricultural or other machine, or vehicle of any kind, and the weight of any load or material of any kind which shall be permitted to cross any bridge, and the times when such engines, agricultural or other machines, or vehicles shall be allowed to cross any bridge.
Times when engines may be driven.	For regulating the times when and the conditions on which traction engines may be allowed to pass along the roads within the county.
Pace at which horses, vehicles, etc., may cross bridge.	For regulating the pace, mode, or manner, and times at which any horses, cattle, engines, agricultural or other machines or vehicles shall cross or be driven, led, or taken over any bridge.

By-laws to be gazetted.

But no by-laws appointing the several sums to be paid to County funds for the licensing of vehicles shall come into force before the same are approved by the Governor by notice published in the *Gazette*.

Copy to be sent to Colonial Secretary.

To comply with the last portion of the above enactment, a copy of the by-law should be sent, as soon as it is made, to the Colonial Secretary, with a request that he will obtain the approval of the Governor to such by-laws, and that a notice of such approval should be published in the *Gazette*.

It should also be specially observed that although by-laws made in pursuance of the above enactments may relate to some of the things in respect to which by-laws can be made under Section 139 of "The Public Works Act, 1905," yet the latter section applies to heavy traffic, whereas the former does not do so. This is an important distinction, and Road Boards and County Councils are therefore recommended to make by-laws as to such matters in pursuance of both sections, without distinguishing between them.

By-laws may also be made under Public Works Act.

The power of a Road Board in any County (whether "The Counties Act, 1886," be in operation in such County or otherwise) to make by-laws regulating traffic, etc., on roads arises in pursuance of Sections 126 and 131 of "The Road Boards Act, 1882." A Road Board or County Council has also extensive powers of making by-laws in respect to heavy traffic under "The Public Works Act, 1905."

Road Board may also make by-laws under Road Boards Act

Heavy traffic is defined in Section 139 of "The Public Works Act, 1905," and the whole clause is a very important one:—

Heavy traffic.

(1) "Heavy traffic" means—

(a) The transportation of any vehicle, engine, or machine which itself, or together with any thing or things being transported thereon, weighs more than one and a half tons avoirdupois to each pair of wheels.

Definition

(b) The traction of any vehicle or thing by means of bullocks, notwithstanding that such vehicle or thing may separately or together with any load thereon weigh less than one and a half tons avoirdupois;

(c) Any traffic which may from time to time be declared to be "heavy traffic" by Order-in-Council. (Nothing has, however, so far been declared to be "heavy traffic" under this provision.)

Power to make
or alter by-laws.

(2) The Minister in respect of all or any Government roads, and of all or any bridges, ferries, and fords under the control of the Minister, and any local authority in respect of all or any roads, bridges, ferries, and fords under the care, control, or management of such local authority, may from time to time make, alter, or revoke by-laws upon the following subjects:—

Classifying
vehicles.

(a) Classifying all vehicles of any kind, and prescribing a maximum and minimum width of tires of all vehicles used wholly or chiefly for the carriage of passengers, whether plying for hire or not;

Regulating in
proportion to
wheels or
weight.

(b) Regulating in proportion to the number of wheels, or to the weight of load, or to the number of animals employed to draw the same, or to all or any of such matters, the width of the tires of all vehicles, whether plying for hire or not;

Regulating the
number of
passengers and
quantity of
goods.

(c) Regulating the number of passengers and the quantity and weight of goods which may be carried in any vehicle with a specified width of tire, or the number of horses or other animals that may be employed to draw the same, and preventing such number, quantity, or weight, being exceeded;

Regulating
generally or
specially.

(d) Regulating heavy traffic generally, or making special regulations in regard to any one or more special kinds of heavy traffic, such as the cartage of timber, stone, minerals, metallic ores, metals, machinery, or any other special kind of load, and dealing in a different way with different kinds of heavy traffic;

Security
against damage

(e) Providing for the giving or taking of security by or from any person that no special damage will accrue to any road, bridge, ferry, or ford by reason of any heavy traffic thereon;

- (f) Providing for the annual or other payment of any reasonable sum by any person concerned in any heavy traffic by way of compensation for any damage likely to occur to any road bridge, ferry or ford therefrom; Annual or other payments.
- (g) Providing for the establishing of a toll to be levied on any kind of heavy traffic; such toll to be established in the manner prescribed by this Act; Toll.
- (h) Providing for a yearly license on any vehicle or machine engaged in heavy traffic; provided, in the case of a by-law made by a local authority, that no other charge is levied thereon by the same local authority; Yearly license.
- (i) Providing that heavy traffic of all or any kinds shall cease during the whole or any part of the months of May, June, July, August, and September; Heavy traffic to cease in certain months.
- (j) Regulating the use of bullocks as traction animals, or prohibiting the use thereof at any time, and for any period; Use of bullocks.
- (k) Regulating the weight of any engine, agricultural or other machine, or vehicle of any kind, and the weight of any load or material of any kind which shall be permitted to cross any bridge or culvert, and the times when such engines, agricultural or other machines or vehicles shall be allowed to cross any bridge or culvert, or the weight of the load which any traction-engine may draw; Weight of engine, vehicle or machine.
- (l) Regulating the pace, mode, or manner, and times at which any horses, cattle, engines, agricultural or other machines, or vehicles, shall cross or be driven, led, or taken, over any bridge or culvert; Pace, mode, or manner for animals or vehicles crossing bridge.
- (m) Regulating the pace, mode or manner in which bicycles or tricycles may pass any vehicle; Cycles.

Fines.

(u) Fixing any fine for any breach of any such by-law, not exceeding in any case the sum of five pounds, except as specially provided in Paragraph (b) of the next succeeding section hereof.

Fines to be expended on road.

(3) All fines recovered in respect of the breach of any by-law made under this section by a local authority must be paid to the county or district or other fund of the authority making the by-law, as the case may be; and all such fines, and all charges, fees, and tolls received by any local authority under this section must, without any deduction, excepting for the cost of collection, be expended on the repair and maintenance of the road, bridge, ferry, or ford in respect of the use of which the same has been received.

Copy of by-law to be sent to Minister.

(4) A copy of every by-law made by a local authority under this section must, within one week after the making thereof, be sent by such authority to the Minister, who may at any time within twelve months after such copy has been so sent, disallow the same or any part thereof; and, upon such disallowance being gazetted, such by-law or part thereof shall cease to have any force; but such disallowance will not affect the validity of anything theretofore done under the by-law or part thereof so disallowed.

Act not applicable to railway or tramway on road.

(5) Nothing in this section applies to any authorised railway or tramway on, over, or across any road, or limits any powers of regulating traffic on roads, bridges, ferries, or fords otherwise possessed by the Governor, the Minister, or any local authority.

Section 140 of the Act amplifies Section 139, and it provides as follows:—

Further power to make by-laws.

For the purpose of giving fuller effect to the provisions of Section 139, the following special provisions shall apply:—

- (a) Any person authorised in that behalf by the Minister in respect of Government roads, or by any local authority in respect of roads under its control, may stop and detain any vehicle or machine which in his opinion infringes any by-law made under that section until the width of the tires, or the weight of such vehicle or machine, and the load thereon, or the weight or measurement of the contents thereof, can be ascertained. Stopping and detaining vehicles.
- (b) Any such by-law may prescribe—
- (1) For the weighing of any vehicle or machine; Weighing and marking weight of vehicle, etc.
 - (2) For the marking of the weight of any vehicle or machine on such vehicle or machine, and imposing a fine not exceeding twenty pounds for the non-marking or incorrect marking of any such weight;
 - (3) For the weighing or measurement of the contents of any vehicle or machine, or the computation of the weight or measurement of such contents from the cubical or superficial measurement thereof. Weighing, etc., contents of cart.
- (c) For the purpose of such computation, such by-law may prescribe what quantity of timber, agricultural produce, mineral, or any material of any description whatever is to be deemed to be of specified weight or measurement, and such weight or measurement so computed is to be final and conclusive in any proceedings to recover a fine for the breach of such by-law. Computing contents.
- (d) Any such by-law may also provide for the driver of any vehicle or machine giving such information as to the load or contents thereof, and the quantity, weight, size, or measurement of the same, or doing such acts for the purpose of enabling the same to be ascertained as any person authorised by the local body in that behalf may require. Driver to give information as to load.

Right of appeal
against by-laws.

These sections have given rise to very considerable litigation, but before considering the effect thereof it is necessary to call attention to Sub-section 4 of Section 139 of "The Public Works Act, 1905," quoted above. That sub-section is intended to give a right of appeal within twelve months to anyone who may be unjustly treated or injured thereby. When this is done it is the custom to refer the whole matter to a Commissioner to take evidence, and to report on the facts of the case; and in such case it is for the local body to bring evidence to show that the by-law is necessary and justified. Failure to send a copy of the by-law to the Minister within the period mentioned has been held to be sufficient to vitiate it and render it *ultra vires* (see *Adams v. Basham*, 8, G.L.R., 540).

Proof of
by-laws.

By-laws made under Sections 139 to 142 of "The Public Works Act, 1905," can be proved in a Court of law by producing the *Gazette* containing a copy of the same, and such *Gazette* is accepted in all Courts as evidence that the by-law has been made under the authority of the said Act (see Section 143 of the Act). It is to be noted that this provision is of very limited operation:—

Firstly, because the *Gazette* is not proof of anything else than that the by-law has been made under the authority of the Act, and will not apparently ensure a conviction for an alleged breach of its conditions if it can be shown that the by-law is otherwise *ultra vires* or unreasonable.

Secondly, because such by-laws are very seldom gazetted unless they relate to Government roads. This arises from the fact that the Act does not require them to be gazetted and consequently the Government Printer claims that they should be paid for as private advertisements.

Copy of by-laws
to be displayed
on bridges.

A copy of a by-law made under Sections 139 to 142 of "The Public Works Act, 1905," relating to bridges must, in terms of Section 143 of the Act, be conspicuously displayed and maintained in a clearly legible condition at each and every bridge to which such by-law relates. This condition can best be complied with by printing the by-laws in good large type on calico and fixing same to some part of the

bridge, or on a board on the bridge. Section 143 also provides that copies of by-laws relating to Government roads under the above sections are to be on sale at the Government Printing Office, and copies of the by-laws relating to other roads are to be on sale at the office of the local authority making same, at a charge of not more than one shilling a copy.

Persons infringing heavy traffic by-laws, and even local bodies, frequently forget that Section 144 of the Public Works Act provides that nothing in the Act or in any by-law made thereunder is to relieve any person from any fine, punishment, or action to which he would otherwise be liable in respect of anything done by him in breach of such by-law. The section also provides that the Minister for Public Works, or the local authority, as the case may be, may sue any person for any damage done to any road or bridge or other works in contravention of any by-law made under the Act, in addition to recovering the amount of the fine for the breach of the law.

Penalty for infringement of by-laws does not relieve from other liability.

This is a far-reaching provision, and does not appear to have been generally taken advantage of by local bodies who may have been successful in obtaining a conviction against some person whose traffic has seriously damaged their roads contrary to their by-laws.

A Road Board or any other local authority is authorised by Section 142 of "The Public Works Act, 1905," to make a by-law prohibiting the cutting of grass for seed on any road or street within its control without the consent of such local authority, or to any special road or street, and it may have effect for a whole year, or only for part of a year.

Cutting of grass for seed.

Heavy traffic by-laws must be drawn up with considerable care, for many persons who would otherwise have been affected thereby have escaped, first by ignoring or defying them, and when the local body has prosecuted them, and the case has been heard, such offenders have frequently been successful in showing that the by-laws are *ultra vires*, or unreasonable, or bad in law.

By-laws must be drawn up with care.

Solicitor should be employed.

It is recommended, therefore, that local bodies should before making such by-laws, always submit them for perusal and settlement by a competent solicitor, for by so doing time and money may often be saved.

If, however, local bodies prefer to take the responsibility themselves, the following remarks may assist them.

Statutes imposing penalties strictly construed.

In making by-laws of this nature the Act must be strictly complied with, for Courts adhere much more strictly to the letter of the law, where anything in the shape of a penalty or tax is imposed, than in some other cases. Consequently, apart from the by-laws themselves, care should be taken to see that the by-law is made by the local body with all the formalities required by law.

By-laws should be in words of statute.

In drafting the by-laws they should be made as nearly as possible in the exact words of the statute; for although synonymous words may be sufficient in ordinary intercourse, they will not always stand the critical examination of a Court of law.

Caution as to yearly license fee.

Thus the by-laws of many local bodies relating to license fees have been upset on the ground that while professing to charge a yearly license fee, they also provide for a payment that is not a yearly one, or one which does not entitle the holder of the license to use the road for a year. Such license fees may be chargeable in pursuance of Sub-section 2 (h) of Section 139 of "The Public Works Act, 1905" (or similar sections in previous Acts), and the license must be for a year, although some local bodies, without stating it in so many words in the by-law, allow the fee to be paid by quarterly instalments, and, consequently, do not collect the proportion of the fee for any special time in the year when the vehicle ceases to run. If it is desired to make the license fee apply for less than a year, it is apparently possible to make it as for a year, but to provide in the by-law for a proportionate rebate for any period less than twelve months within which the license will be inoperative (see *Harding v. Eketahuna County*, 3, Gaz. L.R., 386; 20, N.Z.L.R., 501). The safest way would, however, seem to be to call the charge "a payment," in a by-law specially made-

under Sub-section 2 (f) of Section 139 aforesaid, or a toll could be established on any kind of heavy traffic under Sub-section 2 (g) of the enactment.

The by-law must be reasonable; thus, if a by-law imposes an excessive fee on any class of traffic with the view of rendering it impossible to carry on such traffic, then such a by-law might be held to be unreasonable, as the law gives power to regulate, not to prohibit traffic. No definite lines can be laid down as to what is or is not reasonable, as local circumstances govern such cases, and a Magistrate in trying any such case has a wide discretion as to what is or is not reasonable.

In addition to the power to make by-laws regulating traffic, a Road Board has extensive powers to compel any person who conducts traffic on a road that damages the same, to contribute towards or pay the cost of repair. These provisions will be found in Sections 150 to 152 of "The Public Works Act, 1905," but it should be borne in mind that the "extraordinary traffic" mentioned in Section 150 means something beyond the sort of traffic that usually comes upon the road, or which the road is designed to carry. Thus, if a quarry, sawmill, or brickyard be opened close to the road, and the continuous traffic from same damages the road, such traffic is not necessarily "extraordinary traffic" within the meaning of the Act—as most roads are designed to carry drays or waggons—but if the proprietor of any of these industries attempts to haul his goods by some machine of excessive weight, which the road was not designed to carry, such traffic might be held to be extraordinary traffic (see *Rangitikei County Council v. Gardner and Sons*, 1, M.C.R., 1).

Section 151 of the Act is also intended to give relief to local bodies against damage by excessive weights, and also in cases where relief cannot be obtained under Section 150. Section 151 is a new enactment, and it gives very wide and drastic powers to local bodies; but it should be observed that a copy of a by-law made thereunder must be sent to the Minister for Public Works within one week from the making thereof, and that he has power to veto the same

within twelve months from such copy being sent to him, and this provision is intended to give a right of appeal to persons who may consider themselves to be unjustly treated by such a by-law. Failure to send the copy within the time required has been held sufficient to vitiate the by-law and render it *ultra vires*.

Sections 150 to 152 of the Act are as follows:—

Where it appears to the local authority which is liable or has undertaken to repair any road, whether a main road or not, that extraordinary expenses have been incurred by such authority in repairing such road by reason of the damage caused by excessive weight passing along the same or extraordinary traffic thereon, such authority may recover in a summary manner from any person by whose order, or for whose benefit, such weight or traffic has been conducted, the amount of such expenses as may be proved to the satisfaction of the Court, having cognisance of the case, to have been incurred by such authority, by reason of the damage arising from such weight or traffic as aforesaid.

Provided that any person against whom expenses are or may be recoverable under this section may enter into an agreement with such authority as is mentioned in this section for the payment to it of a composition in respect of such weight or traffic, and thereupon the persons so paying the same shall not be subject to any proceedings under this section.

Where the local authority 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 under its control, the local authority may make a by-law forbidding such carriage or traffic unless the cost, as estimated by the local authority, or reinstating the road is previously paid to it.

Provided that the provisions of Sub-section 4 of Section 139 hereof shall apply to every such by-law.

Every person who commits a breach of any such by-law is liable to a fine not exceeding twenty pounds.

Power to recover cost of repair caused by excessive weights.

Person causing damage may enter into agreement with local body.

By-laws forbidding certain traffic

Penalty.

As indicated in a previous article the provisions in the Public Works Act giving power to local authorities to make by-laws relating to heavy traffic, have been very difficult of application, and they have been strenuously resisted by persons who may have been affected thereby. In many cases the by-laws have been held by the Courts to be *ultra vires*. In a few cases only have the local bodies succeeded in obtaining convictions, and there is at the present time a movement on the part of the greater number of County Councils in the colony to obtain further legislative powers to deal with this matter, and the justification for this is that the Courts frequently lean against the local bodies and have sometimes declared their by-laws to be invalid on grounds that the local bodies are apt to consider to be weak and insufficient. Whether or not Parliament will grant further powers remains to be seen, but in any case a digest of the principal reported cases on the subject may perhaps be instructive and helpful, not only from the point of view of the particular subject, but as illustrating the principles adopted by Courts of law in dealing with by-law cases generally. The following cases are therefore selected from the New Zealand Digest, and from the Gazette Law Reports, and although they apply to counties and boroughs as well as to Road Boards, it is more convenient to discuss them all together, even though this particular article is mainly intended to refer to the powers and duties of Road Boards.

Difficulties encountered in making by-laws regulating heavy traffic.

In *In re Foley v. Wallace* (15, N.Z.L.R., 501), the Supreme Court held that an information and a conviction for an offence against a by-law should state the particular by-law against which the act charged is allowed to be an offence.

List of cases.

In *McPhee v. Wolters* (3, Gaz. L.R., 384; 20, N.Z.L.R., 493), it was held that a by-law is properly made under Sections 304 and 124 of "The Counties Act, 1886," if it is passed at a special meeting and confirmed at a subsequent one, held not sooner than four weeks thereafter, after due public notification and notice as required by the statute. "Adopted," in Sub-section 1 of Section 124, means passed in the first instance. "Adopted," in Sub-section 2 of Section 304, means "final adoption" or "confirmation."

Information must state particular by-law infringed.

How by-law to be made by County.

Confirmation of
by-laws.

In *The Tinwald Town Board v. Watkins* (20, N.Z.L.R., 306), it was decided that a motion, duly proposed, seconded, and carried at a meeting of the Town Board to the effect "That the minutes adopting By-laws XXX be confirmed," is a confirmation of the resolution carried at a previous meeting adopting such by-laws, and also that the common seal of the Board being affixed to the by-laws as they appear in the minutes must be taken, in the absence of any proof to the contrary, that it was properly affixed and that no resolution was necessary.

By whom
prosecution
should be
instituted.

In a case of prosecution for breach of by-laws, *Waters v. Fitzgerald* (18, N.Z.L.R., 511) decided that where a Borough Council had passed a by-law, the breach of which was punishable by a fine, and where a police constable instituted proceedings, that such proceedings should have been taken either by the Borough Council itself or by its authorised representative. This decision was altered by the later case of *In re Lorie* (19, N.Z.L.R., 400), which apparently decided to the contrary, but showed that in the case of penalties for the protection of public rights any person may prosecute; whereas, in the case of penalties imposed for the protection of private rights, only the person aggrieved can prosecute.

No power to
forego license
for engine
unsafe for
traffic.

The validity of a by-law made under "The Counties Act, 1886," and "The Public Works Act, 1894," relating to traction engines, was in question in the case of *Banks v. Drysdale* (16, N.Z.L.R., 67). In that case the Court held that nothing in either of the Acts referred to authorises a County Council to make a by-law to the effect that no license shall be granted to a traction engine used for private purposes, which shall on inspection appear to be unsafe or insufficient for use by the public. This was because the County had gone beyond what the law allowed. The Court also decided that when such a provision is engrafted on an otherwise valid by-law, the owner of such traction engine has a right to treat that by-law as a whole, and is not bound to analyse it and consider how much of it is good and how much bad.

If part of by-law
is bad, the
whole is bad.

The case of *McPhee v. Wolters*, referred to above, also decides that the words of Sub-section 13 of Section 311 of "The Counties Act, 1886" (authorising a County Council to make by-laws for regulating the times when and the conditions on which traction engines may be allowed to pass along the roads within the County) are sufficient to authorise a by-law providing for the inspection of traction engines and the payment of the cost of inspection by the owner in each case. It also appears that the by-law may provide that if an engine has previously done any damage to the roads, the damage must be paid for before the local body issues a license in respect of the engine; but the by-law should make it clear that such damage is, in case of difference, to be ascertained by a competent tribunal.

By-law may provide for inspection of engine and payment of cost of same, or for damages done by it.

The same case refers to the case where a County Council had made a by-law in pursuance of Sub-section 2 (g) of Section 130 of "The Public Works Act, 1894" (now Sub-section 2 (h) of Section 139 of "The Public Works Act, 1905"), which provides for a yearly license fee on vehicles engaged in "heavy traffic." The County had made a by-law providing for the issue of licenses for traction engines, to continue in force until the 1st January then next, on payment of a license fee of £5 in each case, with a proviso that where an engine was brought into the district within six months from that date, the Council might, in its discretion, refund a proportionate part (not exceeding one-half) of such license fee. The Court held that the by-law was invalid, because the fee fixed did not entitle the use of the roads for one year, and also because the question of a rebate was left entirely to the discretion of the Council. If, however, the by-law had fixed a rebate in accordance with the time the license had to run, the Court would probably have held it to be valid. See also the case of *Harding v. The Chairman, etc., Eketohuna County* (3, Gaz. L.R., 386; 20, N.Z.L.R., 501).

Yearly license fee.

The case of *Brown v. McInnes* (15, N.Z.L.R., 256), shows that by-laws purporting to create offences should be clear, precise, and free from doubts as to their meaning, and in this case, where four paragraphs in a schedule to a by-law

By-laws must be clear, concise, and free from doubt.

regulating the width of tires, were distinct and intelligible, but were expressly made subject to a fifth paragraph, which was either unintelligible or which overrode the first four paragraphs, rendering them absurd and unreasonable, the whole five paragraphs were held to be bad.