

CHAPTER VIII.

THE POWERS OF A BOROUGH COUNCIL OVER ROADS AND STREETS.

Provisions of Public Works Act as to roads do not generally apply to boroughs.

The provisions of "The Public Works Act, 1905," and other Acts relating to roads, other than bridges, do not generally apply to streets in a city or borough. The law relating to these matters is for the most part contained in "The Municipal Corporations Act, 1900," and this being so, the statements made in previous chapters as to the law governing roads in counties and road districts must not be taken as having any application to streets in boroughs unless a statement be made to that effect. There are, however, a few provisions in "The Public Works Act, 1905," that affect roads or streets either within or outside of cities or boroughs, and these matters will now be simply mentioned in a general way only, as they either have already been dealt with in detail in discussing the general powers of a Road Board or County Council over roads, or they will be dealt with hereafter when discussing the special questions to which they relate.

Provisions of Act relating to taking land, surveys and compensation, apply to borough and other districts.

The provisions in Part II. of "The Public Works Act, 1905," that give power to take land compulsorily for a road, street, or other public work, apply to boroughs as well as to other districts; and so does Part III. of the Act, relating to compensation for the taking of such lands. Part IV., relating to the taking of native lands, will also for the most part apply to a borough (see Section 288 of the Act), but it is probable that Sections 92 to 96 in Part IV. of the Act do not apply to streets in a borough, because the word "road," and not "street," is mentioned therein (see *Mayor, etc., of Onslow v. City of Wellington*, 22, N.Z.L.R., 926). The power to make surveys in Part V. of the Act applies to boroughs as well as to other districts.

Part VI. of the Act (Section 100, Sub-section 2) states that "This part of the Act shall, so far as concerns boroughs, be construed subject to the repealing provisions of Section 433 of "The Municipal Corporations Act, 1900," in cases where those provisions apply, but those repealing provisions shall not operate to apply to boroughs any provision of this part of the Act which in the absence of those provisions would not apply." The meaning of this is that "The Municipal Corporations Act, 1900," repealed (in so far as boroughs only are concerned) Sections 108, 115, 134 to 138 inclusive: also Sections 141 and 143 to 152, inclusive, and Sections 155, 156, 158, 159 of "The Public Works Act, 1894": but as "The Public Works Act, 1905," repealed the Act of 1894, the effect of all these enactments apparently is that Sections 110, 120, 145, 147, 148, 149, 150, 155 and 157 to 166 inclusive, also Sections 169, 170, 174 and 175 of "The Public Works Act, 1905," do not apply to boroughs. It also appears that the other portions of Part VI. of the Act do not apply to boroughs unless it is clear, by necessary implication, that boroughs are intended to be included in their operation.

Parts of Public Works Act that are distinctly repealed as to boroughs.

A somewhat curious result follows from these provisions. Section 108 of "The Public Works Act, 1894," distinctly refers to the case of the control and apportionment of the cost of maintaining roads that lie lengthways on the boundary of a borough, and to nothing else. This section was repealed by "The Municipal Corporations Act, 1900," so that its provisions then became obsolete and void. It has, however, been re-enacted in "The Public Works Act, 1905," with some additions, and is therefore still law. In this case, also, the provisions in Section 110 of "The Public Works Act, 1905," differ somewhat from Sections 213 to 217, inclusive, of "The Municipal Corporations Act, 1900," which were intended to cover the same ground. These distinctions will be made plain later on.

Application of Section 110 "Public Works Act, 1905," to borough.

Sub-sections 4 and 6 of Section 103 of "The Public Works Act, 1905," give the Governor power to declare, by Order-in-Council, that any road or street constructed or controlled by the Governor within the limits of a borough

Governor may vest road in Borough Council.

shall be under the control and management of the Borough Council, and upon that being done the road or street thereupon becomes a "street" within the meaning of "The Municipal Corporations Act, 1900," *i.e.*, it vests in the Borough Council. This power by the Governor may be exercised from time to time, and the Order-in-Council may at any time be revoked, and if this be done the control of the street will again revert to the Governor. These powers are not very frequently exercised, and when they are exercised it is generally in the case of roads on railway lands, or else on roads or streets made to give access to lands that may have been acquired and cut up in boroughs for settlement by Government, under the provisions of the Lands for Settlement Act.

Apportioning cost of street in borough that benefits other districts.

Section 109 of "The Public Works Act, 1905," relates to roads and streets in boroughs and other districts. This section provides for the apportionment of the cost of maintaining roads or streets in a borough or other district which are largely used by traffic from other districts. A special chapter, wholly devoted to the question of apportionment of the cost of constructing and maintaining roads and bridges among local authorities whose districts benefit, will be found later on in this work, and this being so, the question is not discussed at length in this place. The same remarks apply also to Section 110 of "The Public Works Act, 1905," which refers to the apportionment of the cost of maintaining roads that lie on the boundaries of boroughs.

Compelling persons cutting up lands in borough to dedicate and form streets.

A Borough Council has extensive powers under Sections 116 and 117 of "The Public Works Act, 1905," to compel private persons to dedicate, form, and metal new streets required in the subdivision of land by such persons. The provisions of Sections 118 and 119 of "The Public Works Act, 1905," relative to the allocation of the cost of constructing or maintaining bridges, ferries and fords, which are substantially used or are a substantial benefit to the inhabitants of other districts, apply to boroughs as well as to other districts; and the fact that Sections 219 and 220 of "The Municipal Corporations Act, 1900," and the regulations thereunder are to the same effect, does not prevent

the application to boroughs of the clauses in the Public Works Act; and to prevent question arising it is suggested that when steps are taken by a Borough Council to obtain a contribution under these enactments, the provisions of the corresponding sections in both the Public Works and Municipal Corporations Acts should be quoted. Section 109 of the Public Works Act, under which contributions to the cost of constructing or maintaining a road or street can be obtained (if such road or street is largely used by the inhabitants of other districts), also applies to boroughs. The particulars and effect of these sections will be discussed in a later chapter dealing specially with the subject.

Section 142 of "The Public Works Act, 1905," giving power to a local authority to make a by-law prohibiting the cutting of grass for seed on any road or street under its control applies to Borough Councils. Cutting grass seed.

Section 146 of the Act, giving power to a local authority to order the lowering of trees that overshadow a road or street also applies to a Borough Council. Lowering trees.

Section 184 of the Act provides whereby a person owning timber, or the right to cut timber, on any land from which there is no practicable way of removing the same to any railway, road, mine, or sawmill except by crossing private lands. It is somewhat doubtful if this applies to boroughs as well as to other districts, but it probably applies in certain cases. Removing timber by way of necessity.

Section 191, 192, 194, 195, and 196 of the Act (giving the Government the right to use roads or streets for railway purposes), and Section 197 (referring to the dedication of railway land for the purposes of a road or street), also apply to boroughs as well as to other districts. Using streets for railway purposes.

A Borough Council or other local authority may also agree with the Minister for Public Works or Railways to pay the cost of converting a railway bridge into a combined road or railway bridge, if the Minister thinks such a course is desirable. Combined road and railway bridge.

Closing roads to fortifications.

The Minister for Defence may, in terms of Section 222 of the Act, close roads or streets in any borough or other district that may be necessary for the construction of any fortification, or he may require that such road or street be kept free from obstruction.

Discharging tailings near bridge.

Section 287 of the Act, prohibiting tailings being discharged within five chains of a bridge, applies, apparently, to bridges in boroughs in mining districts, or in places where mining operations are being carried on.

Definition of "street," "private street," etc.

Coming now to "The Municipal Corporations Act, 1900," the first thing to be noted is the definition of "street," "private street," "private way," "right-of-way," and "footway." The definitions of these things has already been given, and the reader is referred to a previous chapter for the same. This being so, the definitions, which are extensive, are not repeated in this chapter. The powers of a Borough Council over streets as set forth in "The Municipal Corporations Act, 1900," are as follows:—

CONSTRUCTION AND MAINTENANCE OF STREETS.

GENERAL POWERS.

Fee simple of streets vested in Corporation.

All streets, and the soil thereof, and all material of which they are composed, is vested in fee simple in the Corporation. This provision is quite different from that which governs roads outside boroughs, for in that case the fee simple of roads is vested in His Majesty, and the local authorities have only certain rights of control and management over roads, but in the case of a borough the streets actually belong to the Corporation. In the latter case, also, all materials placed or laid on such streets in order to be used for the purposes thereof vest in the Corporation, and all public streets, in a borough are under the control of the Borough Council (see Section 212 of "The Municipal

Corporations Act, 1900"). It appears, also, by *Mayor, etc., of Onslaw v. Rhodes and another* (23, N.Z.L.R., 653), that if land has in any way become a public road before the incorporation of a borough, such road vests in the Corporation upon the constitution of the borough (see also *Mayor, etc., of Lower Hutt v. Yerex*, 24, N.Z.L.R., 697; and *McLachlan v. Hughes*, 25, N.Z.L.R., 221; see also *The Land Transfer Act, ex parte The Assets Realisation Board*, referred to in a later chapter, dealing with the dedication of lands and streets).

Every street in a borough is, by Sub-section 3 of Section 212 of the Act, required to be 66 feet wide, measured at right angles to its course, but as a matter of fact numbers of public streets in boroughs are less than this width. The section refers principally to new streets, and Section 236 of the Act, as amended by Section 24 of "The Municipal Corporations Act, 1902," provides that where the configuration of a borough is such that within any particular area or areas thereof it is difficult or inexpedient to lay off streets of the width of 66 feet, the Governor-in-Council may, on application by the Borough Council, permit the Borough Council to lay off streets and private streets of a less width than 66 feet within such area or areas, but the streets so laid off must be at least 40 feet wide. The application in such a case should be made to the Minister for Public Works, and it should be accompanied by a map showing the street or streets referred to, and their width, and sufficient reason for the application should also be given. It must be borne in mind that if a street is authorised at this narrow width, it will not follow as a necessary consequence that the Governor-in-Council will exempt the street from the operation of Section 117 of "The Public Works Act, 1905," and this may prove a serious bar to the owners of land abutting on such street cutting up the same for sale unless they put back their frontage for 33 feet from the centre of the street.

In respect to every street, a County Council has the power to do the following things by virtue of Section 212 of the Municipal Corporations Act.

Streets required to be 66 feet wide unless in exceptional cases.

Powers of Borough Council over streets.

- (a) To construct and repair all streets with such materials and in such manner as the Council thinks fit.
- (b) To make surveys for the laying out of new streets.
- (c) To lay out new streets.
- (d) To divert or alter the course of any street.
- (e) To increase or diminish the width of any street, provided that the width shall in no case be diminished to less than sixty-six feet. (Decreasing the width of a highway is stopping that highway for the width so decreased, see *In re Selwyn County Council*, 5, N.Z.L.R., 163; and the provisions as to stopping a street are to be found in the 7th schedule to "The Municipal Corporations Act, 1900.")
- (f) To determine what part of a street shall be a carriageway, and what part a footway only.
- (g) To alter the level of any street.
- (h) To wholly stop up any street or part of a street, in the manner shown in the 7th schedule to "The Municipal Corporations Act, 1900," provided that no street along the bank of a river, or along the margin of the sea, shall be stopped. (The term "river" is nowhere defined in any New Zealand statute. In *Coulson and Forbes on Waters*, page 58, it is defined as a running stream pent in on either side, *i.e.*, on both sides, with weeds and banks. It includes, therefore, all natural streams, however small.)
- (i) To temporarily stop the traffic on any street or part thereof whilst such street or any drain, water-race, pipe, or apparatus under, upon, or over the same is being constructed or repaired.
- (j) To make and use a temporary street upon any unoccupied land whilst the street adjacent thereto is being constructed or repaired.

(k) To erect upon any part of a street any shaft or structure in connection with any drain or system of drainage, and to enclose and plant any part of a street, and to erect upon any street any monument, statue, or other such erection: Provided in each of these cases that the ordinary traffic shall not, in the opinion of the Council, be impeded.

(l) To name and to alter the name of any street.

(m) To sell the surplus spoil of streets.

In any case where a public highway lies along the boundary of two boroughs, or lies along the boundary of a county and borough, or lies along the boundary of a borough and a town district, whether included (in any such case) entirely within the district of one local authority or the other, or partly in one and partly in the other, or in either, then in any such case if a road or street crosses such boundary or meets another road or street on such boundary, it is not lawful to alter the level of such public highway, road, or street, on or along such boundary or at such point of crossing or meeting, unless the local authorities concerned shall agree as to the new level. If there be any dispute about the matter, the Stipendiary Magistrate sitting in any Magistrate's Court in the district, may decide the matter and all disputes relating thereto, and may award costs against any party (see Sections 214 to 217, inclusive, of "The Municipal Corporations Act, 1900.")

A Borough Council is empowered to contribute towards the funds of any adjoining local authority for the maintenance, repair, widening, or otherwise improving any public highway which is outside the limits of such borough, but is in great measure used by the inhabitants thereof for purposes of recreation, health, convenience, or other purpose of public utility (see Section 218 of the last-named Act).

A Borough Council may also, by Section 221 of such Act, let any ferry, of which it has control, for a period not exceeding fourteen years, and in so doing may at the same time, if he thinks fit, also include in the lease the whole

or any part of a public reserve that may be vested in such Council for the purposes of a ferry. The lease is to be subject to such rent, terms, and conditions as to the maintenance of the ferry as the Council thinks fit, and the Council may grant the lease without submitting the same to public auction or tender; but if the lease is to be for a period exceeding three years, public notice of the proposed terms and conditions must be advertised for at least two months.

A Borough Council will render itself liable to an action for damages for injury sustained, if, during the construction or repair of any street, or when any opening is made therein for the repair of drains, or gas pipes, or for any other purpose, it does not take all sufficient precautions to prevent accident, and someone suffers injury through such negligence. With a view of preventing accident, the Council is required, in any such case, to erect bars or fences across any such street or round any dangerous place therein, or otherwise, and such dangerous place must be lighted by night. If any person remove any such protective work, or if he remove or extinguish any such light, without the authority of the Council, he is liable to a penalty of not more than £10 (see Section 222 of "The Municipal Corporations Act, 1900.")

It appears that a Borough Council is not always liable for accidents occasioned by the non-erection of bars, or the non-maintenance of lights, if there be other circumstances that tend to shift the responsibility for such accident; for in the case of *Ashman and wife v. Mayor of Wellington* (District and Magistrates' Court Reports, Vol. I., p. 67), it was held that the city was not liable. In that case the Corporation in the course of forming a road made a cutting, into which the plaintiff's wife fell and sustained injury. She approached the cutting by night by a track over private land, but there was no necessity to use that way, as there was a public road open in another direction, and the plaintiffs both knew that road works were in progress, but the wife did not know that the track had been interfered with. In this case the Court held that the Corporation was under no

Liability for damages during construction or repair of street.

Liability for accidents through non-erection of bars or non-maintenance of lights.

duty to fence along the cutting, and that there was contributory negligence on the part of plaintiff's wife in using the track at night without a light, knowing that the road works were in progress.

A Borough Council may require the owner of any water or gas pipe, drain, or other apparatus in or under a street, to raise, lower, or otherwise alter the same as the Council directs. If such alteration be not made with all convenient speed, the Council is empowered to make the same, but the cost of such alteration and of any damage occasioned thereby is payable by any person affected thereby, and the Council may recover the cost from him accordingly. These two last paragraphs do not, however, affect the liability of any owner, lessee, or promoter of a tramway other than the Council. That is to say, that where tramway proprietors have statutory powers over streets they cannot shelter themselves behind the Borough Council in respect to any damage which their works may cause to a street, but are themselves responsible for their own acts (see Sections 223 and 224 of "The Municipal Corporations Act, 1900").

A Borough Council may lay out or construct footways or channels, or both, on one or both sides of any street, of such dimensions and of such materials as it thinks fit, and may impose any sum, not exceeding one-half the cost of the works, upon the owners of lands and buildings fronting the same (see Section 225 of the Act; and also the *Tinwald Town Board v. Watkins*, 20, N.Z.L.R., 306).

Any new street in a borough, whether it be a public or private street, must be at least 66 feet wide, but where the configuration of the borough is such that it is difficult or inexpedient to lay off the street of that width, the Governor, on application by the Borough Council, may by Order-in-Council define the limits of any particular area or areas in the borough within which any public or private street may be less than 66ft wide; but such street must be laid off at least 40 feet wide (see Section 236 of the Act). An application to the Governor-in-Council under this enactment should be sent to the Minister for Public Works, with a sketch plan of the locality showing the extent and width of

the proposed street, together with full and sufficient reasons why the application should be granted. Applications of this nature are sparingly granted, and to enable such an application to be favourably considered, very much more requires to be shown than that the land is valuable, and that large compensation will have to be paid. The enactment was intended to meet cases where the area of flat or available land for the street is very limited, or where for some other good reason it is not expedient to make the street the full width of one chain.

There are stringent provisions against a Borough Council permitting streets to be laid out of a less width than is allowed by law, for Section 237 of "The Municipal Corporations Act, 1900," provides that "every Mayor or Councillor who shall consent to the laying out of any street or private street as of a less width than that required by law, or to any other unlawful act in relation to the width of a street or private street, shall for each offence be liable to a penalty not exceeding £50." Any proceedings against a Mayor or Councillor under this enactment must be taken by the Attorney-General, and it is his duty to institute such proceedings as may be necessary for preventing the laying out, or proposed laying out, of any street or private street as of a less width than required by law, or any other unlawful act in relation to the width of a street or private street. If, therefore, any person considers that the law is being evaded to the detriment of the public interest or otherwise, he should write to the Attorney-General on the subject, calling his attention to the matter.

PRIVATE STREETS.

Every private street must be 66 feet wide, measured at right angles to its course, unless it has been authorised at a less width as already mentioned (see Section 226 of "The Municipal Corporations Act, 1900," and Section 24 of "The Municipal Corporations Act, 1902"), and no person may lay out or make any private street or private way, or grant or reserve a right-of-way over any private way in a borough except by permission of the Borough Council.

Penalty for permitting streets to be less than 66 feet wide.

Private street must be 66 feet wide.

and subject to the provisions of "The Municipal Corporations Act, 1900," as to the minimum width as in the case of private streets. In practice, however, Borough Councils have frequently read the Act as empowering them to allow rights-of-way or private ways to be made any width, and they have sometimes treated such highways as rights-of-ways, even in cases where the circumstances pointed to the fact that these rights-of-way were intended to be used as streets. This has had a disastrous effect not only upon the unfortunate persons who may have purchased land fronting such narrow rights-of-way, but upon the Councils themselves, for the Councils have in such cases been unable to legally take over and maintain such streets or rights-of-way, and there is now a very great difficulty in obtaining the exemption of such rights-of-way or streets from the operation of Section 117 of "The Public Works Act, 1905," which relates to the subdivision of land on roads or streets less than one chain wide.

If the Borough Council grants permission for a right-of-way or private way, it may in doing so impose such conditions as to width, levels, entrances, course, formation of footways, cost of formation, maximum number of buildings to be erected fronting any such private street or private way, minimum distance between any two buildings, if dwelling-houses, position of building line, and otherwise in all respects whatsoever as the Council thinks fit. If any person shall lay out or allow to be open for use any private street or private way or grants, or if he reserve any right-of-way contrary to the foregoing provisions, or if he shall neglect or refuse to comply with any condition imposed by the Borough Council as aforesaid, he is liable to a penalty of not more than £10 for every day during which such offence continues after the day on which he receives notice from the Council that such offence has been committed (see Sections 227 and 228 of "The Municipal Corporations Act, 1900").

Private way and right-of-way and conditions relating to same.

District Land Registrars and Registrars of Deeds have responsibilities in this matter, for Sections 229 and 230 of the Act provide that no plan, deed, or instrument

No registration allowed where private street laid out contrary to law.

of any kind whatsoever whereby any private street or private way contrary to the provisions of the Act is created, recognised, referred to, granted, or reserved, shall be received for deposit or registration under "The Deeds Registration Act, 1868," or under "The Land Transfer Act, 1885," or under any other Act for the time being in force for the like purposes. The District Land Registrar is required to enter upon the certificate of title, memorandum of lease, or other proper instrument a note of all conditions imposed as aforesaid by the Borough Council which are contained in or endorsed upon any instrument or plan presented to him for registration or deposit, and such noted conditions have the effect of a registered encumbrance under "The Land Transfer Act, 1885." It follows from this that when a Borough Council consents to a private street or private way, it should see that any conditions upon which such street or way is granted, should be endorsed upon or are attached to the plan and therein referred to in such a way that the matter must come under the notice of the Registrar.

Powers of
Borough Councils over private
streets.

A Borough Council has by Section 231 of "The Municipal Corporations Act, 1900," and Section 23 of "The Municipal Corporations Amendment Act, 1902," the following powers over private streets, viz. :—

Obstruction.

(1) It may require any projection or obstruction in or over any part thereof to be removed at the expense of the person causing the same, or to whom the same belongs.

Kerbing and
channelling.

(2) May, by notice in writing, require the owners of land or buildings abutting on such private streets to construct or repair the same, with the kerbing and channelling thereof; and every owner is liable for the construction and repair of so much of such private street as lies between his land and the middle line of such street.

(3) In case of default, the council may execute the said works and recover the cost from the owners in the aforesaid proportions.

The foregoing provisions apply also to every private way, being not less than 20 feet in width, which for the time being serves as an approach to more than five buildings, which, or the lands belonging to which, front upon such private way (see Section 232 of the Act of 1900).

Application to private street not less than 20 feet wide.

A Borough Council may also, by special order:—

- (1) Declare that any private street, not less than 66ft wide, shall be a public street.
- (2) Declare that any private street laid out in a borough at any time prior to November 2nd, 1878, and which is 20 feet or more in width, shall be a public street.
- (3) Declare that any private street or right-of-way which was laid out within a borough on or after November 2nd, 1878, but before January 1st, 1879, and is not less than 40 feet wide, shall be a public street.

Additional powers in respect to private streets laid out prior to 1878.

But in each of the foregoing cases the private street or right-of-way must be first properly formed and constructed by the owners thereof, and upon fulfilment of these conditions to the satisfaction of the Council, the Council is required to declare the private street or right-of-way to be a public street, and it will then vest as such in the Corporation, and must thenceforth be maintained by the Council (see Sections 233 to 235 of "The Municipal Corporations Act, 1900").

Such streets must be constructed before being made public streets.

SETTING BACK THE BUILDING LINE.

A Borough Council may, by Section 238 of the said Act, make by-laws requiring that when new buildings are erected or any buildings are rebuilt or re-erected, or are substantially re-built or re-erected, such buildings shall not stand within 33 feet from the middle line of any street or private street specified in the By-law.

Building line may be set back 33 feet from centre of street.

The Council may, however, make an alternative by-law requiring that any such new or other buildings on the side of a street or private street shall not stand within 66 feet from the opposite side line of the street or private street. Any such by-law may prohibit the adoption of any methods or devices for evading the spirit of this section, but every

Or in the alternative buildings to be 66 feet apart.

person having any estate or interest in any land or building injuriously affected by the operation of any such by-law is entitled to full compensation, to be claimed under Part III. of "The Public Works Act, 1905."

Exempting narrow streets from operation of Public Works Act if building line is set back.

In cases where applications have been made for the exemption of narrow streets in boroughs from the operation of Section 117 of "The Public Works Act, 1905," it has frequently happened that the application has been granted subject to the building line being set back under the foregoing provisions. This being so, when the Council is moved to make the application at the instance of some private owner of land, who wishes to subdivide the same, it is suggested that the Council should obtain from him an indemnification against any claims that may be made if the Government requires the building line to be set, or in the alternative that he will set back his frontage without compensation or upon such terms as may be mutually agreed upon. When the building line has been set back in pursuance of a direction to that effect under an Order-in-Council issued in terms of Section 3 of "The Public Works Act Amendment Act, 1906," such condition is registered against the title to all lands affected thereby, and anyone infringing such a condition will render himself liable to the pains and penalties set forth in such enactment.

ALTERING AND STOPPING STREETS AND LAYING OUT NEW STREETS.

Stopping or diminishing width of street.

A Borough Council may by special order make any new street, or divert, widen, or diminish the width of or stop any existing street, or alter the name of a street (see Section 239 of "The Municipal Corporations Act, 1900"), but it is to be noted that before a street is stopped the procedure set forth in the 7th schedule to the Act must be observed; and also that as the diminishing of the width of a street is really stopping that part of the street, it would, from the wording of Sub-section 4 (h), of Section 212 of the Act (and also from the decision in the case of *In re Selwyn County Council*, 5, N.Z.L.R., 163), appear that the procedure in the 7th schedule must also be observed where it is desired to diminish the width of the street.

The provisions of the law must be strictly complied with (see *Symons v. the Mayor, etc, of Foxton*, 25, N.Z.L.R., 59, and 7, Gaz. L.R., 477). In that case the borough by ordinary resolution resolved to stop the street, and then followed the authorised procedure, and declared the street to be stopped. The borough should have resolved to stop the street by special order, and because this was not done the Supreme Court held that the street had never been stopped.

Law must be strictly complied with.

The procedure for stopping a street in a borough is contained in the 7th schedule to "The Municipal Corporations Act, 1900," which provides:—

Procedure for stopping or diminishing width of streets.

1. That the Council shall prepare such plans, give such notices, and make such deposits as are prescribed. (This means prescribed by regulations, and these regulations are set out below.)
2. The Council shall by public notice call a meeting of the electors.
3. The Mayor shall preside at the meeting, and such meeting shall decide by a majority of the district electors present whether or not the street shall be stopped.
4. If the meeting decide that the street be not stopped, no proceeding for stopping such street shall be taken by the Council for one year thereafter. If the meeting decide that the street may be stopped, the Council shall send the plans aforesaid, with a full description of the proposed alteration, and with their decision thereon, to the Stipendiary Magistrate.
5. The Stipendiary Magistrate shall then consider the proposed alterations and any objection made thereto by any person likely to suffer injury thereby, and shall confirm or reverse the decision of the electors; and the decision of the Stipendiary Magistrate shall be final and conclusive.

6. The Stipendiary Magistrate shall not confirm the decision unless he is satisfied that a convenient way to the lands in the vicinity of the said street is left or provided.
7. If the Stipendiary Magistrate reverse the decision of the electors, no proceedings shall be entertained by him for stopping such street for two years thereafter.
8. If the Stipendiary Magistrate shall confirm the decision of the electors, the Council may declare by public notice that the said street is stopped, and such street shall thereafter cease to be a public highway.

The regulations made on the above subject are contained in the *New Zealand Gazette* of May 15th, 1902, and they provide as follows:—

Regulations
as to stopping
streets.

Plan,

1. The Council shall have a plan prepared of the street proposed to be stopped and a survey made and a plan prepared of the new street (if any) showing the lands through which it is proposed to pass, and the owners and occupiers of such lands so far as known.

Public
inspection.

2. The said plans shall be open to public inspection at the office of the Council during four consecutive weeks prior to the holding of the meeting of electors required to be held by Clause 2 of the 7th schedule to "The Municipal Corporations Act, 1900" (set out above), and the Council shall once in each week during such period give public notice of the proposed alteration, and of the place where the plans are on view.

Notice.

3. A notice of the proposed stoppage, printed on linen or calico, shall be affixed in a conspicuous place at each end of the street to be stopped.

Copy to be sent
to Chief
Surveyor.

4. A copy of the said notice and plans shall be transmitted by the Council for record in the office of the Chief Surveyor of the District, and no notice of the stoppage shall take effect until such record is made.

The Council may sell land not required for a street, or it may apply it to any purpose of public utility on certain terms set forth in Section 240 of "The Municipal Corporations Act, 1900." The provisions of this section are:—

1. Where, in diverting or stopping or diminishing the width of any street, any part thereof is no longer required for public use, the Council may sell such part to the owner or owners of any adjoining lands for a price to be fixed by a competent valuer appointed by the Council to value the same; and if no such owner or owners is willing to purchase the land at the price fixed, the Council may sell or lease the same by public auction; and a conveyance or lease under the seal of the Corporation shall constitute a good and valid title to such land. Power to sell closed street.

2. In lieu of selling or leasing the land as aforesaid the Council may apply the same, or any part thereof, to any purpose of public convenience or utility approved by the Governor-in-Council, or with the like approval may grant a lease of the same for such term and on such conditions as it thinks fit for any purpose of public utility. (An application hereunder for the approval of the Governor-in-Council should be sent to the Minister for Public Works, with a plan showing the stopped road, and with full and sufficient reasons for the application.) Land to be offered adjoining owner.
Or it may be applied to purpose of public convenience.

Section 241 of the Act provides that when for the purpose of laying out any new street, or in order to divert, extend or widen any existing street, the Council deems it expedient to acquire more land on either or both sides of such street than is required for such purpose, the Council may take, purchase, or otherwise acquire such land, and when the work has been completed the Council may sell or lease any surplus area, as provided in Section 240 of the Act. ("Take," in this clause, means take by proclamation Power to take land for new street or widening street.)

under "The Public Works Act, 1905"; see Section 203, Sub-section 3, of "The Municipal Corporations Act, 1900.")

LEVELS OF STREETS.

In addition to the powers under Section 214 of "The Municipal Corporations Act, 1900," that refer to the levels of a road or street on the boundary of a borough, Sections 242 to 248 of the Act contain provisions as to the levels of streets in a borough, and as to the rights of the borough and the public in respect thereto. These sections provide that within two years from the constitution of a borough the Council is to cause a map to be made showing all the streets and private streets therein, with the levels thereof, as the same are or are intended to be or will be required to be permanently constructed; and such map is to be open for public inspection at the offices of the Council; and all buildings erected within the borough and all private streets are required to be constructed with reference to the levels shown upon the said map. The case of *Solicitor-General and another v. Mayor, etc., Melrose* (19, N.Z.L.R., 106), shows that if the plan cannot be prepared at once, the Council should have some defined scheme as to what the works are to be and what the level is to be. The case of *Fowler v. the Mayor, etc., of Mosgiel* shows that the Court will only in an extreme case direct a borough to make maps showing the levels of streets and drains (see 6, Gaz L.R., 34).

The Council may at any time, either before or after the making of the map, fix the level of any street or private street, subject to the conditions in the eighth schedule to "The Municipal Corporations Act, 1900," and all levels fixed under Section 244 of "The Municipal Corporations Act, 1886," or under any Act or ordinance repealed by that Act, are deemed to have been fixed under the Act of 1900.

Map showing all street levels in borough to be made.

Power to fix levels of private streets.

Procedure.

The eighth schedule to the Act of 1900 requires:—

Notice.

1. The Council to publish in the borough a notice of its intention to fix such level, and the notice is to describe the street by name and situation, and the proposed level thereof by reference to plans to be open for inspection at a place named in the notice.

2. The Council is by such notice to appoint a day, Objections.
not being less than one month after the publication of such notice, at which it will hear objections to the proposed level by persons affected thereby.
3. All objections must be in writing addressed or Objections to be in writing.
sent to the Council not less than 10 days before the day of meeting next mentioned.
4. The Council is to hold a meeting on the day Hearing objectors.
so notified, at which all persons having so made objections shall be entitled to be heard in support thereof.
5. At such meeting the Council may, after con- Power of Council to decide objections.
sidering all such objections, resolve to abandon the proposed level, or to adopt it with any alterations it thinks fit.
6. The Council is to publicly notify the level so Notification of level so fixed.
fixed, and is to refer to a plan to be deposited at the office of the Council, and to be open for inspection.

Section 245 of the Act provides, however, that in In streets where no buildings exist level may be fixed summarily.
the case of any street or private street upon which no building or land belonging to a building fronts, the Council may fix the level without complying with the provisions of Clauses 1 to 5 of the said eighth schedule.

Section 246 of the Act provides that no compensation Limitation of actions for payment of compensation in respect of alteration of street levels.
shall be payable by the Council in respect to the alteration in the level of a street or private street, unless such alteration has been made after such level has been fixed under the Act, or after such street has been constructed in some permanent manner by any local authority having the power to do so. The case of *Williams v. Mayor, etc., of Wellington* (3, Gaz. L.R., C.A., 210), shows that when the levels of the street are altered, there can be no claim against the Corporation for injury done to property by the alteration in the level, even though the street has been formed and metalled for many years, unless the former levels are shown in the map of the borough under Section 190 of "The

Municipal Corporations Act, 1876" (now Section 242 of "The Municipal Corporations Act, 1900"), (see also *Koertz v. Waverley Town Board*, 3, N.Z.L.R., S.C., 48, and *Penn and another v. Stratford County Council*, 13, N.Z.L.R., 33).

Liability of owner if he disregard the fixed level of street.

Any person who builds any house or other building abutting on a street or private street without regard to the level thereof, as fixed under the Act, is liable to pay to the Council any expenses the Council deems it necessary to incur in altering the level or construction of such street or private street adjacent to such building (see Section 247 of the Act).

Right to lateral support.

Section 248 of the Act applies the common law rule as to the right to lateral support both to the Corporation as the owner of any street, and to the owner of land abutting thereon.

Batter or slope of street.

The same section provides that it is lawful for the Council to throw the batter, or make the slope of any street upon any land, subject, however, to the payment of compensation under "The Public Works Act, 1905."

INJURIES TO AND NUISANCES ON STREETS AND GENERAL.

Nuisances.

In addition to the power to suppress nuisances under "The Police Offences Act, 1884," and its amendments, which apply to streets in boroughs as well as to roads outside the same, there are special powers under "The Municipal Corporations Act, 1900." Section 249 of the Act provides "That every person who, not being authorised by the Council or by any Act:—

Encroachments

1. Encroaches on a street by making or erecting any building, fence, ditch, or other obstacle or work of any kind upon, over, or under the same, or planting any tree or street thereon (a balcony projecting over a street is an encroachment on such street, see *Plimmer v. Loughrey* 4, N.Z.L.R., C.A., 73).

Balconies.

Leaving things.

2. Places or leaves on a street any timber, earth, stones, or other thing

3. Digs up, removes or alters in any way the soil or surface or scrapings of a street Removing things.
4. Allows any water, tailings or sludge, or any filthy or noisome matter, to flow from any building on land in his occupation on to a street. Water or filthy matter.
5. Causes or permits any timber or other heavy material, not being wholly raised above the ground on wheels, to be dragged on a street Dragging things.
6. Causes or negligently allows any retaining wall, foundation wall, or fence erected on any land, or any batter or slope of earth, or any building erection, material, or thing, to give way or fall, so as to injure or obstruct any street Obstructions.
7. Does or causes or permits to be done any act whatsoever by which any injury is done to any street or any work or thing in, or under the same Injury.

shall be liable to a penalty 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 Council in removing any such encroachment, obstruction, or matter, or in repairing any injury done as aforesaid: Provided that no penalty shall be imposed unless the information or complaint is laid by authority of the Council or some officer thereof. Penalty.

A by-law is not bad simply because it does not follow "The Police Offences Act, 1884," which provides that it is an offence to use a bicycle on a footpath, if what is done is an injury or annoyance to foot passengers, and there is also power to prohibit the wheeling of a bicycle over a footpath (see *Watt v. Isell*, 23, N.Z.L.R., 205). Bicycles on footpaths.

A Borough Council has power to erect a cab shelter on a portion of a street so long as it does not interfere unduly with the reasonable use under the circumstances of the street (see *The Queen v. The Mayor, etc., of Wellington*, 15, N.Z.L.R., 72). Cab shelter.

Excessive weights and extraordinary damages.

A Borough Council may recover extraordinary expenses that it may have been put to in repairing a street which has been damaged by excessive weights passing over the same, or by extraordinary traffic thereon. In any such case the Council may recover such expenses from any person by whose order such weight or traffic has been conducted as a debt (see Section 250 of "The Municipal Corporations Act, 1900").

Fencing land adjoining street.

Section 251 of the Act provides that "Whenever the public health, safety, or convenience renders it expedient, the Council may require the owner or occupier of any land, not separated from a street by a sufficient fence, to enclose the same by a fence to the satisfaction of the Council."

Protecting dangerous place.

Section 252 of the Act provides that "The Council may require the owner or occupier of any land upon which there is any hole, well, excavation or other place dangerous to persons passing along any street, forthwith to fill in, cover, or enclose the same."

Cellars near streets.

Where the owner or occupier of any ground proposes to construct a cellar, or make any other excavation, within 66 feet from any street, private street, or any adjoining property, he shall give notice of his intention to the Council whose consent must first be obtained to the commencement of such work; and the owner or occupier shall cause such cellar or excavation to be so constructed or made that it cannot become a receptacle for stagnant water or other impure matter (see Section 253 of the Act).

Removing or lowering trees and gorse.

A Borough Council has similar powers to a Road Board or County Council under Sections 146 to 148 of "The Public Works Act, 1905," to remove or lower trees overshadowing a road, and to remove gorse; and the procedure under "The Public Works Act, 1905," differs from that in "The Municipal Corporations Act, 1900." A Borough Council has also special powers under "The Municipal Corporations Act, 1900," and Section 254 of "The Municipal Corporations Act, 1900," provides:—

- (1) That the Council may, by order in writing Order to be in writing. under the hand of the Mayor or the Clerk, require the occupier, or, in case there is no occupier, then the owner, of any land abutting upon the street within the borough, to do any of the following acts:—
- (a) To remove, lower, or trim to the satisfaction Hedges of the Council any tree or hedge overhanging such street in cases where, in the opinion of the Council, such removal, lowering, or trimming is necessary in order to prevent injury to the street or obstruction to the traffic thereon, or to any channel, ditch, or drain appertaining thereto; and
- (b) To cut down or grub up, as the Council directs, Plants on streets. and remove all obstructions to traffic or drainage arising from the growth of plants, or the spreading of roots upon or under such street, up to the middle line thereof, along the whole frontage of the land occupied or owned by him.
- (2) Within ten days after service of the order such occupier or owner, may, by complaint under Owner may appeal. “The Justices of the Peace Act, 1882” (the provisions whereof shall, *mutatis mutandis*, apply), require the local authority to appear before a Stipendiary Magistrate to show cause why the order should not be set aside.
- (3) On the hearing of the complaint, the Magistrate, Magistrate to decide. whose decision shall be final, shall determine whether the order should or should not be set aside, and in the former case the order shall be deemed to be void.
- (4) In the case of an order which is not set aside Penalty. as aforesaid, if such occupier or owner fails to do any such act in compliance therewith within two months from the service thereof, or, where complaint as aforesaid has been

heard, then within two months after the hearing, he is liable to a penalty not exceeding one pound for every day thereafter during which such failure continues, and the Council may enter on the land and do such act and recover the cost from him.

Cost a charge on the land.

(5) The said cost shall be a charge upon the land, and may be recovered as rates are recoverable under "The Rating Act, 1894."

Ratepayer may require Council to take action.

(6) In any case where the Council might make any such order as aforesaid in respect of any land, any ratepayer may, by notice in writing, request the Council to do so.

Power to compel it to do so.

(7) If, for the space of twenty-eight days after the receipt of such notice, the Council fails to comply therewith, the ratepayer may by complaint under "The Justices of the Peace Act, 1882" (the provisions whereof shall *mutatis mutandis* apply), call upon the Council to appear before a Stipendiary Magistrate to show cause why the notice should not be complied with.

Magistrate to decide.

(8) On the hearing of such complaint the Magistrate shall determine whether and to what extent the notice should be complied with by the Council, and his decision shall be final.

Enforcement of such decision.

(9) Any order made by the Council pursuant to the Magistrate's decision shall be subject to the provisions of Sub-sections 2 and 3 of this section.

Definition.

(10) For the purpose of this section—"Cut down" means cutting down the stem and roots of any plants so as to prevent their throwing out any leaf, offshoot, or flower, and "Plant" means and includes gorse, sweetbriar, blackberry, acacia, broom and fennel.

As showing how a Borough Council may be liable for the acts and omissions of private individuals, the case of *The Mayor, etc., of Invercargill and another v. Hazelmere*, is instructive (see 8, Gaz. L.R., 151; 25, N.Z.L.R., 194). In that case the Borough Council had permitted a private siding to be constructed on a public street, and knew through its officer that such siding was out of repair, and nevertheless permitted it to remain upon the road in this dangerous condition, and the Corporation was held to be liable for any individual injury sustained thereby. Such liability does not depend upon the omission of the Corporation to keep the road in repair, but upon the fact that in its capacity as the local authority having control of the public street, the Council had allowed a person to erect an obstruction on a public road and had permitted such obstruction to become a public nuisance.

Borough may be liable for acts of private persons in certain cases.

Section 255 of "The Municipal Corporations Act, 1900." provides that if cattle are found straying on a street, the Council, or any person, may cause such cattle to be taken to the nearest public pound, whether in or out of the borough, to be dealt with as in the case of cattle impounded (see also *Price v. Godfrey*, 2, L.R., S.C., 300).

Cattle straying on street.

A Borough Council has, under Sections 256 to 259, and the ninth schedule of "The Municipal Corporations Act, 1900," exactly the same power to establish toll gates and collect tolls on bridges and ferries in the borough as a Road Board or County Council has on a district or county road under Sections 156 to 158 of "The Public Works Act, 1905," and it is not necessary to set out these powers in full, as they have already been detailed in the chapters dealing with the powers of a Road Board over roads. Section 260 of "The Municipal Corporations Act, 1900," provides for the payment of a penalty not exceeding £5 by any person who hires or plies for hire in any boat or punt across any river, stream, or creek within half a mile in a straight line from any public ferry in working, or within the same distance from any bridge open for traffic across such stream or river, at which tolls are payable.

Toll gates

Regulations as to tolls.

The Governor is empowered to make regulations prescribing the manner and term for which and conditions upon which any such tolls may be leased, and regulating the distraining for or recovery of tolls, and compensation for non-payment thereof, and imposing penalties for non-payment or evasion of tolls, and prescribing the duties of toll collectors and penalties for breach thereof, and any other regulations in connection with such tolls (see Section 261 of "The Municipal Corporations Act, 1900"), but no regulations have hitherto been made under this section.

Tolls not to be established in derogation of other legal rights.

The provisions of "The Municipal Corporations Act, 1900," empowering a Borough Council to establish tolls is not to be construed to limit or interfere with the right to levy tolls on any bridge, ferry, tramway, or toll gate granted to any person or persons during the period for which such tolls have been so granted, except on payment of adequate compensation (see Section 262 of the Act).

Ferries.

A Borough Council has much greater powers than has any other local body in respect to the establishment of ferries, but this power may apparently be exercised by other local bodies in certain circumstances, as will appear hereunder. Section 264 of "The Municipal Corporations Act, 1900," provides:—

Power to purchase or hire steamers and fix fares, etc.

(1) That the Council may establish ferry services between termini within or partly within and partly without the borough, and may purchase or hire steamers and other vessels for that purpose, and may fix the fares and generally regulate the services.

By-laws as to ferries.

(2) The Council may make by-laws for licensing any vessels plying between termini within the borough for the carriage of passengers for hire, and for preventing unlicensed vessels from so plying, and also fixing the maximum fares and tolls to be charged for the carriage of passengers and goods on such vessels, and the time of running and the route, and generally regulating the services.

- (3) The powers granted by this section may be exercised by any two or more local authorities jointly whose districts are benefited by any service, and the powers given by Sub-section 2 may be jointly exercised as regards vessels plying between termini within the several districts of two or more local authorities. Local bodies may join in establishing ferry service.
- (4) For the purpose of this Section a terminus is deemed to be within a district if it is on the borders or in the close vicinity of same, and it is not in another Borough, or in a County, Road District, and Town District. Definition of terminus.

It is to be noted that these last two sub-sections are of much wider application than as affecting boroughs only, and that they will apparently apply to a ferry service between the districts of any two local authorities, whether Borough Councils or otherwise. The term "local authority" is not defined in "The Municipal Corporations Act, 1900," but in other Acts it refers to a Road Board, Town Board, County Council, Harbour Board, etc. (see definition of "local authority" in Section 2 of "The Public Works Act, 1905"). Statute extends to other bodies than Borough Councils.

A Borough Council is empowered by Section 269 of "The Municipal Corporations Act, 1900," to construct upon or under any street all such drains as are shown on the drainage map of the borough, and by Section 280 of the Act the Council may make main drains under any road outside the borough that may be necessary to carry off sewage matter or surface water into the sea or into any tidal river, or to any places convenient for the purpose of collecting, utilising, or selling such sewage matter. Before the Council can make such a drain it must give one month's notice in writing to the local authority having control of such roads, before interfering with the same. If the local authority objects to the proposed work the matter is required to be referred to the Minister for Public Works, whose decision thereon is final. All such drains outside the borough area are vested in the Corporation, and the Council may in respect thereto construct ventilating shafts, man- Drains.

holes, and other entrances, light and lamp holes and other appurtenances, in, upon, or under any lands and roads outside the borough (see Section 282 of the Municipal Corporations Act).

Liability of Council for acts of contractors.

A Borough Council is liable for any injury which may result from a diversion, by its contractors, acting under its authority, of storm water flowing down the water channel of a street (see *Mayor, etc., of North-East Valley v. Worsdell*, 1, L.R., S.C., 335).

Road or street may be broken up in connection with waterworks

In the construction or repair of waterworks a Council may break up or dig into the surface of any street, private street, or public place within the borough, or of any road beyond the borough, and may alter any drain, sewer, or gas pipe on or under any such street or road so far as is necessary, for such construction or repair (see Section 290 of the Act). The following provisions as to the construction of waterworks outside a borough, in so far as they affect roads, are set forth in the eleventh schedule to the Act, viz. :—

Procedure.

Notice.

(1) Before interfering with any road or other public work lying or being outside the boundaries of a borough, for the purpose of constructing waterworks, the Council shall give not less than one month's notice in writing to the local authority having the control of such road or work.

Objections.

(2) If such local authority objects to such interference, the matter shall be referred to the Minister for Public Works, whose decision thereon shall be final.

Repairs.

(3) The Council may at any time interfere with such road or work, so far as to effect all necessary repairs in such waterworks, on giving to such local authority three days' previous notice in writing of intention to do so.

Sudden emergency or danger.

(4) And, in any sudden emergency or danger to the waterworks or property adjoining, the Council may, without any previous notice,

proceed to effect the necessary repairs, but shall as soon as practicable give notice to such local authority of having so proceeded.

A Borough Council may by Section 319 of the Act do all things necessary to light the roads, streets, and public places in the Borough with gas, and for that purpose may lay pipes under the streets and public places, and may alter drains or water pipes thereunder, and may erect lamp posts and all requisite fittings thereto in the streets and public places.

Lighting roads and streets with gas.

Sections 335 of the Act empowers a Borough Council to do all things necessary to light the streets and public places with electricity, and to supply electricity to the inhabitants of the borough, but the Council must conform to the provisions of Part IV. of "The Electric Lines Act, 1884."

Lighting roads and streets with electricity.

Section 351 of "The Municipal Corporations Act, 1900," gives a Borough Council large powers in the matter of improving any insanitary portions of the borough, and in carrying out such object the Council may abolish streets, private streets, private ways and other ways and passages on any land which has been purchased or taken by the Council under the provisions of "The Public Works Act, 1905," and the Council may lay out fresh streets, squares, and open spaces, etc., in such part of the borough. If any public street is abolished under these provisions, it is assumed that it must be first of all closed under Sections 239 and 240 of the Act.

Sanitary improvements.

BY-LAWS.

In the case of by-laws dealing with noxious weeds or plants, a Borough Council is required by Section 374 of "The Municipal Corporations Act, 1900," to use all necessary means to eradicate such weeds or plants from all streets, river beds, reserves, and lands under the control of the Council, either before enforcing or concurrently with the enforcement of such by-laws.

Noxious weeds.

A Council may make by-laws in connection with streets under Sections 403 and 404 for the following purposes:—

Power to make by laws.

- Preventing injury. (6) Protecting from damage or injury any property belonging to the Corporation, or controlled by the Council.
- Public health. (8) Conserving public health, safety, and convenience, and preventing and abating nuisances.
- Exceptional traffic. (9) Regulating, controlling, or prohibiting exceptional traffic on streets and prescribing payments in respect of such traffic.

Leaving horse and cart on crossing on footpath.

In the case of *Briggs v. Conn* (2, J.R., N.S., S.C., 38), a Borough Council had made a by-law prohibiting the obstruction of any footpath. The Council had also by regulation provided for the construction of crossings over footpaths. The appellant was convicted of obstructing a footpath by leaving his horse and cart standing on a crossing over the footpath while he was loading the cart. The Court held that a crossing was part of the footpath, and anyone allowing a vehicle to remain on a crossing necessarily allowed it to remain across the footpath (see also *Mayor, etc., of Auckland v. Davidson*, 8, Gaz. L.R.; 25, N.Z.L.R., 497).

No power to grant license to allow cattle to graze on streets.

It appears that it is a nuisance to allow cattle to be at large on streets in a borough, and that a Borough Council has no power to prevent it (see *Price v. Godfrey*, 2, N.Z.L.R., 300). In that case the by-law provided that persons allowing cattle to be at large in the streets of the borough should be liable to a penalty, but that persons having obtained the license of the Borough Council should be exempt from that penalty. The Court held that such a provision was *ultra vires*, as it is a nuisance for cattle to be at large in the streets of a borough.

Placards on verandahs may be restrained.

A by-law forbidding the placing of placards on calico, paper, canvas or other material upon or against any verandah or verandah post is not unreasonable. There is no need that the matter prohibited should necessarily be a nuisance. It is sufficient if there are reasonable grounds for supposing that in certain circumstances it is likely to become a nuisance (see *In re Lowe*, 19, N.Z.L.R., 400).

Street processions.

A by-law regulating street processions and prohibiting all except certain specified processions unless the sanction

of the Borough Council be obtained, is valid (see *McGill v. Garbutt*, 5, L.R., S.C., 73).

Section 404 of "The Municipal Corporations Act, 1900," also empowers a Council to make by-laws concerning streets and the use thereof, and the construction of anything upon, over, or under a street, and regulating or prohibiting the erection of buildings not having a frontage to a public or private street, and regulating the conduct of carriers of persons and goods for hire and hawkers, pedlars, keepers of coffee and other stalls, criers and bellringers.

The Mayor of Christchurch v. Shah (21, N.Z.L.R., 578), shows that a Borough Council may grant a license for a hawker to stand in a particular place in a street.

Section 16 of "The Municipal Corporations Amendment Act, 1903," contains some additional powers of making, altering or repealing by-laws beyond those contained in Section 403 of "The Municipal Corporations Act, 1900." Under these powers a Borough Council may make, alter, or repeal by-laws:—

- (a) 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 borough.
- (b) For regulating the weight of any engine, agricultural or other machines, or vehicles of any kind, and the weight of any load or material of any kind, which shall be permitted to cross any bridge within the borough, and the times when such engines, agricultural or other machines, or vehicles, shall be allowed to cross any such bridge.
- (c) For regulating the times when and the route by which traction engines may be allowed to pass along the streets within the borough.
- (d) For regulating the pace, mode or manner, times at which any horses, cattle, engines, agricultural or other machines, or vehicles shall cross or be driven, led, or taken over any bridge within the borough.

- Route.** (c) For prescribing the route by which loose horses, cattle, sheep, pigs, or other animals may be driven along the streets within a borough.
- Advertisements on streets or public buildings.** (f) For regulating, controlling, or prohibiting the display upon or over public buildings or bridges, or upon or over buildings, walls, fences, lamp-posts, pavements, or hoardings, situated in or upon, or adjoining, any land or street the property of the Corporation, or under the control of the Council, or the display in any manner so that it shall be visible from any such street or public place, of posters, placards, handbills, writings, pictures, or devices for advertising or other purposes.

Limitation of load to 15 cwt. unreasonable and invalid.

In the case of *Grater v. Montague* (7, Gaz. L.R., 104), a by-law had been made by a Borough Council under Section 403 of "The Municipal Corporations Act, 1900," and Section 13 of the Amendment Act of 1903, in the following terms, viz.:—"No person shall drive or cause to be driven upon or along any of the streets or roads within the said borough any vehicle having or carrying thereon a load exceeding 15 cwt. in weight, unless the tires of the wheels of the vehicle shall be 4 inches in width." The Court held the by-law to be unreasonable, and therefore invalid.

Powers under by-laws to regulate fares and charges may be extended by resolution of Council.

In framing by-laws under "The Municipal Corporations Act, 1900," regulating fares and charges in connection with licensed vehicles, the Council may, *inter alia*, leave any matter or thing to be determined, applied, dispensed with, prohibited, or regulated by the Council from time to time by resolution, either generally, for any classes of cases, or in any particular case (see Sub-section 2 of Section 405 of the Act. The Council may also provide that such by-laws shall operate within the radius of ten miles from the principal post office in the borough (see Sub-section 5 of Section 405 of the Act.

Also powers to restrain or regulate exceptional traffic may be dealt with by resolution.

The powers which a Borough Council possesses to make by-laws under Sections 403, 404 and 405 of "The Municipal Corporations Act, 1900," relating to "exceptional traffic"

due to "traction engines," came into question in the case of *Munt- Cottrell and Co., Ltd., and another v. Doyle* (6, Gaz. L.R., 554; 24, N.Z.L.R., 417). In that case the Court held that Sub-section 2 of Section 405 of the Act is not restricted to matters of detail or of administration, but authorises the leaving of essential matters to be dealt with by resolution. The Council of the City of Wellington had made a by-law providing that traction engines should travel only on such streets within the city, and between such hours and times as the Council should from time to time by resolution prescribe, and the Court held that the Council had power to make this by-law under the special provisions of Sub-sections 1, 4, 8, and 9, of Section 403, and under the provisions of Section 404 of the Act vesting in a Council power to make by-laws concerning streets and the use thereof.

The Court also held that the by-law could be supported under Sub-section (c) of Section 16 of "The Municipal Corporations Act, 1903," as the power to regulate the route by which traction engines might be allowed to pass along the streets of a borough gives the Council power to confine the traffic of traction engines to particular streets.

Regulating
route for
traction
engines.

The Court also held that "exceptional traffic," as used in Sub-section 9 of Section 403 of the Act of 1900, means a class of traffic which is not in common use upon the public roads of a borough.

Definition of
exceptional
traffic.

The Magistrate before whom the appellants were prosecuted for breach of the by-law, found that the traction engines damaged man-holes and fire-plugs when they were above the level of the street, and frightened horses, and might damage fire-plugs in any case if there were stones on them. He held that the standard by which to determine whether traffic is extraordinary, is the ordinary traffic on the road in question, and that traffic engaged in by a traction engine is exceptional. The Supreme Court held that, assuming the question whether the traffic of traction engines is "exceptional" or not to be a question of fact, the Magistrate had found sufficient facts to support the view that it is "exceptional."

Decision of
Magistrate as
to meaning of
"extraordinary
traffic."

Powers of Borough Council to declare traffic to be exceptional.

The Court held, further, that the Legislature having by the Police Offences Acts, 1893 and 1894, treated such traffic as dangerous, and by Section 16 of "The Municipal Corporations Act, 1903," as a proper subject for regulation, the Council of a borough had full power to declare it to be exceptional; and, therefore, proof of the by-law, and that the appellants drove their traction engine along a road other than a road specified in a resolution under the by-law, would have been sufficient to support a conviction.

By laws not invalid because they conflict with Police Offences Act.

It was also decided in the case of *Davidson v. the Mayor, etc., of Auckland* (8, Gaz. L.R., 41; 25, N.Z.L.R., 497), that a by-law made under Sections 403, 404, and 405 of "The Municipal Corporations Act, 1900," was not invalid merely because in fixing the maximum penalty it conflicted with the penalty for the same offence under the Police Offences Act.

Vehicle license granted in one borough, available for all boroughs within five miles radius.

Section 406 of the Act, as modified by Section 32 of "The Municipal Corporations Amendment Act, 1902," provides that a vehicle license taken out under a by-law in a borough, within which the vehicle mostly plies, shall suffice within five miles therefrom; provided that the Borough Council collecting license fees for vehicles and drivers shall distribute such fees rateably between all the boroughs, within the said five miles, in the proportion that one borough bears to the whole population of the boroughs concerned; and also that 10 per cent. of the amount so collected shall be retained to cover the cost of collection and supervision.

Such license is effective in a district which is not part of a borough.

In the case of *Challenger v. Cawkwell* (24, N.Z.L.R., 897; 8, Gaz. L.R., 86), it was decided in a case where part of a County intervened between two boroughs (which were within the five mile radius) that the license which had been issued by the Council of one of the boroughs, while effective to protect the licensee in so far as his use of the streets of the other borough was concerned, was ineffective in so far as the roads in the county were concerned, and that he was rightly convicted for a breach of the county by-laws, which required him to obtain a license for his vehicle on the county roads. In the case, however, of *Hutt County Council v.*

Munt, Cottrell and Co. (2, D.C. and M.C.R., p. 53), the Magistrate held the contrary opinion; but as this case was decided in this manner because of the effect of Section 10 (r) of "The Municipal Corporations Amendment Act, 1906," it must be held to override the decision in the case of *Challenger v. Cawkwell*, above.

In the case of *Kendall v. White* (8, Gaz. L.R., 218), the New Plymouth Borough Council had made a by-law under Section 406 of "The Municipal Corporations Act, 1900," providing that "No carriage or vehicle of any kind whatever shall be kept or used to ply for hire for the carriage of passengers and goods, either by contract or otherwise, either wholly within the borough or between any place without the borough, unless it shall have been licensed," etc. On hearing a charge for breach of the by-law the Magistrate held that it was invalid in so far as it purported to require a license for traffic not wholly within the borough. On appeal, the Supreme Court held that the Borough Council had power to require that a license be taken out for a vehicle plying for hire between a place within the borough and a place without, and the fact that such a license might be inoperative beyond the borough boundaries would not be sufficient to make a by-law under which it was issued *ultra vires*.

License may be granted for traffic between a place in a borough and a place beyond it, but it cannot be enforced by borough outside its own district.

Persons guilty of committing a breach of any by-laws made under "The Municipal Corporations Act, 1900," are liable to a penalty not exceeding £20, or when the breach is a continuing one, then to a penalty not exceeding £5 for every day or part of a day during which the breach continues. A Borough Council may also, after conviction for the continuing breach of a by-law, apply to the Supreme Court for an injunction to restrain the further continuance of such breach (see Section 408 of the Act).

Penalty.