

CHAPTER IX.

THE POWERS OF A TOWN BOARD OVER ROADS AND STREETS.

Powers of a
Town Board
over its roads.

The powers of a Town Board over roads and streets within its district principally arise under "The Town Districts Act, 1881," and "The Town Districts Act, 1906." These enactments give a Town Board all the powers of a Borough Council over the roads within its district if the Town District contains over 500 inhabitants. If, however, it contains less than 500 inhabitants, it has all such powers except as to the main roads and county roads within its boundary. A Town Board has the same power as a Borough Council to make by-laws in respect to its roads (see Sections 32, 33, 35, 36 and 53 of "The Town Districts Act, 1881.")

Town Board has
all the powers
of a Borough
Council.

Section 33 of the Act gives Town Boards all the powers conferred upon Borough Councils by Part XI. of "The Municipal Corporations Act, 1876," and Section 36 gives Town Boards all the powers conferred by Part XII. of the same Act, but that Act has long since been repealed, and Division V. and Part XLV. of "The Municipal Corporations Act, 1900," take the place respectively of Parts XI. and XII. of the Act of 1876. This being so, Section 2 of "The Municipal Corporations Act, 1886," Section 4 of "The Municipal Corporations Act, 1900," and Section 12 of "The Interpretation Act, 1888," show that the rights of Town Boards over their own roads is now governed by the provisions of Division V. and Part XLV. of "The Municipal Corporations Act, 1900," in so far as these provisions correspond with Parts XI. and XII. of "The Municipal Corporations Act, 1876," in substance and effect (see *Tinwald Town Board v. Watkins*, 20, N.Z.L.R., 306).

A reference to the case just quoted will also show that parts of the Municipal Corporations Acts have in effect become incorporated in "The Town Districts Act, 1881," and the question arises whether by this incorporation the fee simple of roads in Town Districts vests in the Town Board or in the Crown? This is an important question, and one which should be definitely settled. The dicta of Denniston, J., in *Tinnwald Town Board v. Watkins*, quoted above, would appear to show that the whole of Parts XI. and XII. of "The Municipal Corporations Act, 1876," were incorporated in "The Town Districts Act, 1881," and as Section 185 of Part XI of "The Municipal Corporation Act, 1876," vests streets in a borough in the Corporation thereof, it is to be assumed that roads in a Town District are vested in the Town Board. This, however, does not apparently give the fee simple; for it was not until "The Municipal Corporations Act, 1900," became law, that the fee simple of streets in a borough became vested in the Corporation of the borough (see Section 212 of the Act of 1900). This provision was not in "The Municipal Corporations Act, 1876," and it does not therefore apparently apply to Town Districts. If this be so, then the fee simple of roads in town districts still vests in the Crown. Again, Sections 31 and 36 of "The Town Districts Act, 1881," gave Town Boards the same powers, *inter alia*, over roads as a Borough Council had over streets, but a power differs from an estate. The control or management of a road is in the nature of a power, but the fee simple of a road is an estate, and to take from the Crown its estate in a number of roads would, it is submitted, require plain and explicit language.

The main roads referred to in Section 32 of "The Town Districts Act, 1881," mean any roads or portion of roads declared by the Governor to be main roads (see Section 2 of the Act). Such a road is in the nature of a Government Road controlled and maintained by the Governor, but roads of this nature are declared to be Government Roads under the Public Works Act, and the term "main road" has fallen into disuse, and no roads have been declared main roads since the repeal of "The Roads and Bridges Construction Act, 1882."

Parts of
Municipal
Corporations
Act now
incorporated in
Town Districts
Act.

Fee simple of
roads in Town
District.

Main roads in
Town District.

County roads in
Town District.

The country roads referred to in Section 32 of "The Town Districts Act, 1881," mean any roads declared by the Council of any county to be county roads (see Section 2 of the Act).

Footpaths in
Town Districts.

Section 3 of "The Counties Act Amendment Act, 1904," provides that a County Council may from time to time authorise any Town Board within its boundaries to construct or repair at its own cost any footpaths in any county road within such Town District, and for that purpose the Town Board is authorised to expend such part of its ordinary fund as it thinks fit.

Town Districts
having 500 in-
habitants have
all the powers
of a Borough
over Roads.

It will be gathered from the foregoing that, save and except in case of main or county roads in a Town District containing less than 500 inhabitants, the Town Board has all the powers of a Borough Council over its own roads and streets, and this being so, the reader is referred to the last chapter, which gives particulars of such powers, and which may of course be read as applying to Town Boards, and it is not therefore necessary to again set them out.

Town Board has
also powers
under Public
Works Act.

In addition to these powers a Town Board has in respect to a Town District road all the powers, rights, duties and liabilities vested in and imposed upon a Road Board under "The Public Works Act, 1905" (see Sub-section 1 (c) of Section 106 of that Act).