

CHAPTER X.

THE POWERS OF THE GOVERNMENT OVER ROADS AND STREETS.

The Governor has almost the same powers over a Government road or street as any local authority has under any Act over roads or streets vested in such local authority. This power arises under Sub-section 2 of Section 106 of "The Public Works Act, 1905," which provides:—

- (2) All the rights and powers vested in any local authority by any Act in respect to—
 - (a) The care, management, or control of roads or streets.
 - (b) The management, restriction, or prohibition of any traffic thereon.
 - (c) The use of any vehicle, engine, machine, or thing thereon, including the power to impose any charge or tax thereon.
 - (d) The abatement or prohibition of any nuisance thereon.
 - (e) The power to make and enforce by-laws for any or all of such purposes may, in the case of a Government road, or road or street being constructed, improve, or maintained by Government, be exercised by the Governor.

Section 106 of "The Public Works Act, 1905," provides that all the powers, rights, duties and liabilities vested in and imposed upon a Road Board by that Act in respect of a district road shall in the case of a Government road be vested in and imposed upon the Governor.

Governor has similar powers over Government roads or streets as has a local body.

Governor has all the powers of a Road Board.

In addition to these powers, Section 102 of the Act vests all roads and the soil thereof in His Majesty, together with all materials and things of which such roads are composed, or which are capable of being used for the purposes thereof, and are placed or laid upon such roads. The section applies to Government roads, district roads, county roads, and perhaps to Town District roads, although this latter is not at all clear.

Section 103 of "The Public Works Act, 1905," also provides as follows:—

Construction and repair.

(1) The Governor may construct or repair any road within any part of New Zealand, but such road shall not, by reason of such construction or repair become a Government road if at the time of such construction or repair it was not a Government road.

Road may be declared a Government road.

(2) The Governor may, by Order-in-Council duly gazetted, declare that any road shall be a Government road, and such road shall become a Government road accordingly.

Road or street in borough may be vested in corporation.

(3) The Governor may in like manner declare that any road or street constructed or controlled by the Governor within the limits of a borough shall be under the control and management of the Council of the borough, and such road or street shall thereupon be deemed to be a street within the meaning of Section 209 of "The Municipal Corporations Act, 1900.

Road in Town District may be vested in Town Board.

(5) The Governor may in like manner declare that any road constructed or controlled by the Governor within the limits of a Town District shall be under the control and management of the Town Board, and in such case the road shall be deemed to be a Town District road.

Powers may be exercised from time to time.

(6) The powers hereby conferred on the Governor-in-Council may be exercised from time to time, and any Order-in-Council made hereunder may be revoked or altered, and a fresh

Order-in-Council may be made as often as the Governor-in-Council thinks fit, and every such Order-in-Council shall have full effect according to its tenor.

These powers are very extensive, and it is possible thereunder for a County Council or Road Board which is dissatisfied at having to maintain a road, to obtain an Order-in-Council declaring that the whole or any part of such a road shall be a county or district road. If such an order is obtained the liability may be shifted from one body to the other, or *vice versa*. Before any such action is taken it would require a very strong case to justify such interference between the local bodies. The application should in such a case be made to the Minister for Public Works, supported by sufficient evidence to show a *prima facie* case for interference. The matter would then probably be inquired into by a Commissioner as in any ordinary case of dispute between local bodies.

Granting relief where County or Road Board is dissatisfied at road being vested in it.

In counties where the operation of "The Counties Act, 1886," is suspended, the Governor may exercise all the powers of a County Council under Section 108 of "The Public Works Act, 1905," to vest the control of any road in the county in any local authority within the county, and to apportion the cost of constructing and maintaining such road or part thereof among any or all of the local authorities in such county.

Control of road where Counties Act not in operation.

The Governor has power also, by Sections 109, 118, and 119 of the Act, to apportion the cost of constructing or maintaining any road, bridge, ferry or ford which is of use or benefit, or which is largely used by the inhabitants of more than one district, among the local authorities of such districts, whether such districts are Road Districts, Town Districts, Counties, or Boroughs.

Apportioning cost of maintaining road that is largely used by inhabitants of other districts.

The Governor has power also by Section 110 of "The Public Works Act, 1905," to apportion the cost of maintaining roads on the boundary of boroughs, but as Sub-section 2 of the section provides that the section shall be construed subject to Sections 213 to 217 of "The Municipal

Apportioning cost of roads on boundaries of boroughs.

Corporations Act, 1900," in cases where those sections apply; and, as those sections cover most of the cases that are likely to arise, Section 110 of "The Public Works Act, 1905," appears to be of very little effect. The two enactments conflict, as in one case the Governor is the arbiter, and in the other case the Stipendiary Magistrate is the arbiter, and the sections conflict in other ways, as will be explained later on in the chapter dealing with the apportionment of the cost of constructing and maintaining roads, bridges, ferries and fords.

The Governor also has power to apportion the cost of constructing and maintaining roads on the boundaries of counties (see Section 250 of "The Counties Act, 1886," and Section 111 of "The Public Works Act, 1905.")

There is power also in Section 321 of "The Counties Act, 1886," for the Governor to settle disputes between a County Council and the governing body of any other county, or of any Road District, Town District, or Borough, as to the right to receive rates, or to the possession, care, or control of any bridge, road, or other property.

The Minister for Public Works is empowered by Section 115 of "The Public Works Act, 1905," to provide road access to land which has been sold by the Crown without such access. The provisions of Section 115 of the Act have already been detailed in Chapter II., under the heading of "Ways of Necessity."

The Minister for Public Works has the power to settle disputes that may arise between an owner and the local authority and the District Land Registrar in respect to questions that may arise in the cutting up of land that fronts on to a road or street of less width than 66 feet. The Minister in such case is required to give his decision in writing, and his decision is final and conclusive on all parties; and he may for the purposes of such decision cause an inquiry to be held by a Commissioner (see Section 117 of "The Public Works Act, 1905").

The Minister for Public Works also has authority by Section 121 of the same Act to expend "thirds" and "fourths" in cases where the local authority either will,

Apportioning cost of roads on boundaries of counties.

Settling disputes between counties and other bodies.

Road access to land sold by Crown without access.

Disputes between land owners and local authorities or land registrars.

Minister may expend "thirds" if local authority will not do so.

not or does not expend the same. The section, which is an important one, provides as follows:—

“Where any local authority is notified that accrued ‘thirds’ or ‘fourths’ are available for expenditure, and for a period of not less than eighteen months fails to utilise the same, the Minister may give such 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 ‘thirds’ or ‘fourths’ as aforesaid may be undertaken by the Minister, and all rights of the local authority thereto shall be determined.”

Notice to be given to local authority to put works in hand.

The Governor may also authorise any local authority 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; but such authority will not limit the liability of the local authority in respect to damage done to persons or property by reason of the removal of such timber, stone, mineral, metal, or other substance (see Section 122 of “The Public Works Act, 1905”).

Authority to sell timber, stone, etc., on road.

The Minister for Public Works has power under Sections 123 to 127 of the said Act, to authorise the erection of swing gates on a Government road in a sparsely populated district, or by agreement with the owner in any case where a road is taken or constructed through private lands, for a period not exceeding twenty years. The details of these sections, which apply equally to Road Boards and County Councils, have already been given in a previous chapter.

Swing gates on Government roads.

The Governor has the same power as a Road Board or County Council possesses (under Sections 130 to 132, and Sections 134 and 135 of “The Public Works Act, 1905”) of stopping roads and disposing of the land comprised in such stopped roads, and of exchanging land for roads, but in practice the procedure set forth in these sections is seldom or ever followed by the Government. A very much shorter method can be adopted, either under Section 13 of “The Land Act, 1892,” and its amendments (if it is a simple

Stopping roads and exchanging lands for same.

exchange of land for a road, caused by a deviation of the road, and if the land owners consent thereto), or else under the powers conferred by Sub-section (c) of Section 133 of the Act, if there be no deviation or exchange of land, or the land owners or local body do not consent. Further particulars on this subject will be found in a later chapter dealing with stopping and exchanging land for roads.

Power to make by-laws.

The Minister for Public Works also has the same power to make by-laws regulating heavy traffic on Government roads, and for prohibiting the cutting of grass seed on such roads, as has a County Council or Road Board under Sections 139 to 144 of the Act, and the Minister for Public Works has the power of veto within a certain time in respect to heavy traffic by-laws made by any local authority under the Act.

Restraining injuries on Government roads.

The Governor may also obtain the necessary authority to restrain injuries to Government roads, or to compel the owner of land having trees or hedges which overshadow or overhang a Government road to lower or trim the same, or to remove gorse or other plants on a road (see Sections 145 to 149 of the Act).

Recovering expenses of repairing extraordinary damages on roads.

The Governor may also recover expenses incurred in repairing a Government Road that has been damaged by extraordinary traffic thereon, and the Governor may also make a by-law forbidding traffic that is likely to cause injury to a Government road, unless the estimated cost of reinstating the road is first of all paid (see Sections 150 and 151 of the Act).

Power to prevent mining debris being deposited near bridge.

The Minister for Public Works has the same power as a local authority to prevent mining debris being deposited within five chains of a bridge under his control (see Section 287 of "The Public Works Act, 1905," and Section 122 of "The Mining Act, 1905").

Tolls on Government roads, bridges, or ferries.

The Governor may also establish or abolish tolls on any Government road, or at any Government bridge, ferry, or ford, in the manner set forth in Sections 156 to 170 of "The Public Works Act, 1905," and by Sections 171 to 173 of the Act the Governor-in-Council is empowered to abolish any toll gate, or to diminish the tolls taken thereat, whether

such toll gate has been established by a local body or by the Government under the said Act, if, after due inquiry, he is of opinion that the road in respect to which the tolls are taken is not kept in proper repair, or that the tolls are excessive and unduly burdensome.

The Governor may by proclamation close any road or street required for a railway, or may take any land required for any road or street, division or approach, and may wholly close for the full or any less width thereof the whole or any part of the length of any road or street, the exclusive use of which is required for a railway, and no proclamation taking or closing a road or street for such purpose can be impeached or made defeasible on any ground whatsoever (see Sub-sections (l.e.) and (l.f.), and Sub-section (3) of Section 188 of the Act. Closing Government road.

The Minister for Public Works may make any part of a line of railway on or along any part of any road or street, or he may make it upon, across, or under any road or street, or he may alter the level of any road or street for such purpose, and he may construct such roads in connection with a railway as may be thought necessary (see Sub-sections (l.b.), (l.c.), and l.d.) of Section 190 of the Act. Railway may be made on Road.

Sections 191 to 196 of "The Public Works Act, 1905," show what the rights respectively are of the Government, local bodies and the public, in cases where roads are interfered with in the course of constructing a railway, and, as they are important, they are set out in detail as follows:— Roads interfered with by railway, rights of public, etc., thereon.

Section 191 provides that:—

- (1) Where any part of a road or street, except where it crosses a railway on a level, is used or occupied for a railway under the powers conferred by Section 190 of the Act, such part of the road or street shall thereafter cease to be a highway. Railway crossing on the level.
- (2) Where a road or street crosses a railway on a level the public right-of-way at such crossing shall cease whenever any engine or carriage Right of way ceases at such place when engine, etc., approaching.

on the railway is approaching, and within a distance of half a mile from such crossing; and the public right shall at all times extend only to the right of crossing the line of railway with all convenient speed, but not to stopping or continuing thereon.

- (3) Whenever a railway is constructed upon or across a road or street, upon the same level, it shall be lawful for the Minister to carry on and conduct the working and management of such railway in every respect upon or across such road or street.

Section 192 of the Act, dealing with compensation, shows that:—

- (1) No compensation shall be payable to any person or body in respect of the use or occupation of any part of any road or street for any railway under the powers conferred by Section 190 of the Act, or for or in respect of any inconvenience or damage to any lands fronting or adjoining any such road or street arising out of the construction of the railway upon such part of such road or street.

- (2) No compensation shall be payable to any person or body in respect of any road or street being wholly closed under the powers conferred by Section 188 of the Act, or in respect of the use or occupation thereof for any railway, or for or in respect of any such inconvenience or damage as mentioned in the last preceding sub-section, if reasonable and sufficient access to the nearest road or street crossing over such railway is afforded by some other road or street, and this is so whether such last-mentioned road or street has been provided or constructed by the Minister or not.

- (3) If any question arises as to whether such other reasonable and sufficient access as aforesaid is afforded, the same shall be determined in such manner as is agreed upon between the local

Minister has full power of management at such crossing.

No compensation payable for use of such road, etc., for a railway.

No compensation if other sufficient access is provided or exists.

If question arises hereunder, matter to be decided between Minister and local authority.

authority having the control of roads or streets in the district and the Minister; and every such determination shall be conclusive as to the rights or claims of all persons affected.

- (4) In the event of no such agreement being come to, all claims for compensation in respect of the matters mentioned in Sub-section 2 hereof shall be determined in the manner provided in Part III. of the Act, but no compensation shall be awarded if in the opinion of the Compensation Court such other reasonable and sufficient access is afforded as aforesaid.
- If no agreement then Compensation Court to decide.

Section 193 provides that Government must make necessary crossings as follows, viz. :—

“In cases where the making of a railway line has cut off all access by road to land other than Crown land, the Government shall make such crossing or crossings as may be necessary to give access to such land.”

If all access be cut off, Government to provide other access.

“Provided that not more than one crossing may be demanded in respect of each property, unless the frontage of such property to the railway exceeds one mile in length, in which case one crossing shall, on the application of the owner of such property, be given for each mile of frontage; but no additional crossing or crossings need be given in the event of the land being or having been subdivided after the construction of the railway.”

Only one crossing over railway allowed to each mile in length of any one property.

Section 194 refers to roads or streets that may have been closed before the construction of the railway, and the section provides as follows:—

“In any case where the whole or any part of any road or street has been at any time before the passing of this Act, actually wholly closed by the construction of a railway thereon, or the use and occupation thereof has been stopped for the purposes of a railway, and has so

Roads or streets closed before construction of railway.

continued up to the time of the passing of this Act, such road or street or part thereof shall be deemed to have been lawfully closed under the powers conferred by Section 188 hereof as from the time of such actual closing."

Section 195 declares that:—

"The provisions of the four last preceding sections shall apply and be deemed to have applied to railways owned by any company or person under the authority of any Act of the General Assembly."

Section 196 contains the following provisions:—

- (1) Where it is found necessary for the construction of a railway to alter any road, street, tramway, watercourse, or drain, or any other public work, or any water pipe or gas pipe for the supply of water or gas belonging to a private person or company, such alteration shall be made in such manner as to interfere as little as possible with the work so altered, and so as to afford to the public, and to every person entitled to use the same, an equal use and convenience, as far as may be, as before such alteration.
- (2) Before commencing any such alteration the Minister shall cause a plan thereof to be prepared and to be submitted to the local authority having the control of the work proposed to be altered, or to the owner of such water pipe or gas pipe, or other work, as the case may be.
- (3) If such local authority or owner objects to the proposed alteration, the Minister shall appoint a competent engineer to confer with such authority or owner, and to agree with it or him as to the manner in which such alteration shall be made, and, if no agreement can be come to between the parties, the matter shall be referred to the Governor, whose decision thereon shall be final.

Application of Act to private railways.

Watercourses, pipes, drains, etc., may be altered in the construction of a railway.

Plan to be prepared.

Objections.

- (4) The Minister may at any time interfere with any such road, street, public work, or pipe, so far as to effect all necessary repairs on any railway theretofore lawfully constructed thereon, but shall give to such local authority or owner three days' notice of his intention so to do. Minister may interfere with road, but notice to be given.
- (5) But in any sudden emergency or danger the Minister may carry out forthwith all such works as appear to him to be necessary, but shall as soon as possible give notice of so doing to such local authority or owner. Works of emergency may be done without notice.

The Governor is empowered by Section 197 of "The Public Works Act, 1905," to declare land taken for a railway to be a road or street on the following terms:— Railway land may be declared a road or street.

- (1) Whenever it may be considered desirable to allocate any portion of any land reserved, taken, purchased, or otherwise acquired for a railway to the purposes of a road or street, and it is certified by the Minister that such land is not required for railway purposes, the Governor may, after having received the consent of the local authority hereinafter referred to, by proclamation declare such portion of such land as is defined in such proclamation to be a road or street, and may by such proclamation vest the control of such road or street in the local authority most capable, in his opinion, conveniently and effectively to construct, control, and maintain the same. Such land to be proclaimed.
- (2) From and after the date of the gazetting of such proclamation such portion of land shall become a road or street, and shall be under the control of and be liable to be maintained by such local authority in like manner as other public highways are controlled and maintained by such authority. After proclamation is gazetted, road to be under control of local authority.

Section 198 of "The Public Works Act, 1905," provides:—

Combined road and railway bridges.

(1) That any local authority may agree with the Minister to pay the cost, or estimated cost, of converting any railway bridge into a combined road and railway bridge, which work of conversion the Minister is authorised to carry out, if he should so think fit.

Local body empowered to contribute to construction or maintenance of such bridge.

(2) That such local authority is hereby authorised to pay such cost, and also to pay annually to the Minister such further amount as may be necessary to maintain the roadway of the said combined bridge, and any approaches, gates, or other works or structures in connection therewith, and also to pay to the Minister such amount, if any, annually, as may be requisite to pay the wages of one or more caretakers of the said bridge.

Such contribution to be paid out of funds of local body.

(3) That all moneys hereby authorised to be paid by a local authority shall be paid out of the fund under its control, and be charged accordingly.

Usual arrangement in such cases.

The usual arrangement in any such case is for the Railway Department to estimate the cost of that portion of the bridge that is essential to the roadway only, and then for the local body to pay a proportion of that cost annually; and for such payment the Railway Department undertakes to keep the bridge in repair, and to renew it from time to time without extra payment by the local body.

Rights of public to use combined road and railway bridge.

The right of the public to use a combined road and railway bridge is to be found in Section 199 of the Act, which provides as follows:—

(1) Where a bridge is used for railway and ordinary traffic jointly, the public right-of-way on such bridges shall extend only so far as is defined in any by-law made under Section 11 of "The Government Railways Act, 1900."

- (2) The Minister may close any such bridge to public traffic for such periods as may be deemed advisable when it is found necessary to execute such repairs thereto as will prevent the use of the same for such traffic.

Section 11, Sub-sections (5) (p), (5) (q), (5) (y), and (5) (z) of "The Government Railways Act, 1900" (referred to in No. (1) of the last paragraph), gives authority to the Minister of Railways to make by-laws as follows:—

- (5) (p) Regulating the traffic on roads and bridges used both for ordinary and railway traffic. Bridges.
- (5) (q) Regulating the public or private traffic of persons, vehicles, or goods on roads across any railway on the level thereof. Roads.
- (5) (q) Regulating the public or private traffic of Section 130 of "The Public Works Act, 1894," on roads and bridges over or on any railway; limiting weight on wheels, width of tires, and width between tires; making special regulations in regard to traction and other engines and machines; issuing permits for the passage of such traffic on such terms and conditions as the Minister thinks fit; exercising in respect of such traffic the powers conferred by Sub-sections 6 and 7 of Section 7 of the last-mentioned Act upon the Minister in respect of Government roads: prohibiting the passage of all traffic which does not conform to the regulations, or permits respecting the same, and prohibiting also the passage of heavy traffic across any bridge over a railway in cases where a level crossing is available within a distance of one mile. Heavy traffic.
- (5) (z) Providing for the grant of licenses to the drivers of vehicles plying for hire within the precincts of any railway; prescribing the conditions of such licenses (including the payment in each instance of a license fee not exceeding ten shillings per annum), and also Licenses.

By-laws as to roads crossing railways and as to combined road and railway bridges.

of the transfer or forfeiture thereof; making similar provision for the licensing of vehicles plying for hire as aforesaid (including the payment in each instance of a license fee not exceeding ten shillings per annum), and the conditions subject to which such licenses shall be held and may be transferred or forfeited; and providing also for the exclusion of any such licensed driver or vehicle from railway premises until there is room for his vehicle, and for the exclusion of all unlicensed drivers and vehicles plying for hire as aforesaid.

Grant of right-of-way or passages over or under railway land.

The Minister for Railways is empowered by Sub-sections 2 (a) and (d) of Section 41 of "The Government Railways Act, 1900," to grant, subject to such conditions as he may think fit, any easement, privilege, or concession over railway lands, such as a right-of-way or passage, or a right to lay, and with power to the grantee to construct, maintain, and use any roadway, footway, or level crossing upon or under railway land.

Maintenance of roads and streets on railway land.

The maintenance of roads or streets on railway land is provided for as follows in Section 44 of the last mentioned Act, viz. :—

Road or street on the level.

(1) Where a road or street crosses a railway on the level, the Minister of Railways shall maintain and metal the road and crossing on the railway, and for a distance on each side of thirty-three feet outside the centre line of any line of rails so crossed; and the local authority having charge of the road or street shall maintain and metal the approaches to such crossing, subject to the approval of the Minister of Railways.

Road or street over or under a railway.

(2) Where a road or street crosses over or under any railway by means of a bridge, the structure of such bridge shall be maintained by the Minister of Railways; but the road or street on or under such structure shall be maintained and metalled by the local authority having charge of the road or street.

There are extensive powers under Sections 222 and 223 of "The Public Works Act, 1905," in respect to taking or closing roads and streets for defence purposes. Section 222 provides that:—

"In addition to the power vested in him of taking land for defence purposes, the Minister for Defence is hereby empowered on behalf of His Majesty to close the whole or any part of any road or street for such purposes, and to require that any land which he has power to take, or any road or street or part thereof shall (instead of being taken), be kept free from obstruction in respect of the use of any fortification."

Section 223 contains the following provisions:—

- (1) Any land, or any road or street, or part thereof, may be taken or closed for defence purposes, or required to be kept free from obstruction in respect of the use of any fortification, in the following manner:—
 - (a) A map shall be prepared in duplicate, showing accurately the position and extent of the land, road, or street proposed to be taken or kept free from obstruction. Power to take or close road, etc.
 - (b) Such map shall be signed by the Surveyor-General, or some authorised surveyor appointed by him to certify plans for the purpose of any Act relating to the conveyance or transfer of land, as evidence of the accuracy thereof. Map to be signed by Surveyor General.
 - (c) The Governor may thereupon, by proclamation publicly notified, declare that such land or road or street, or part thereof, a description whereof shall be contained in or annexed to the proclamation, is taken or closed for defence purposes, or required to be kept free from obstruction in respect of the use of any fortification. Issue of proclamation for above purposes.
- (2) A proclamation taking or closing land or a road or street or part thereof, for defence purposes shall, when gazetted, be conclusive Proclamation when gazetted is conclusive evidence.

Closing roads or streets for defence purposes.

Power to close or to keep free from obstruction.

Power to take or close road, etc.

Map to be prepared.

Map to be signed by Surveyor General.

Issue of proclamation for above purposes.

Proclamation when gazetted is conclusive evidence.

evidence that the land therein referred to, and the soil of any road or street or part thereof therein referred to, is vested in His Majesty in fee simple, freed and discharged from all mortgages, charges, claims, estates, and interests of what kind soever, for defence purposes; the proclamation to be also evidence that any road or street or part thereof thereby closed has ceased to be a public highway.

- (3) A proclamation requiring land or a road or street or part thereof to be kept free from obstruction, does not vest such land, or road, or street, or part thereof, absolutely in His Majesty, but it has the effect of a separate covenant by every person or body having any estate or interest in the land, road, or street, and all persons claiming under such person or body, with His Majesty, that such land, road, or street shall at all times be kept free from obstruction, unless the Minister for Defence agrees to the release of such covenant, either wholly or in part, which he is hereby empowered to do in any case he thinks fit.
- (4) On the deposit of the proclamation and map in accordance with Section 24 of "The Public Works Act, 1905," the proper officer of the District Land Registry Office for the district where such land, road, or street is, shall make such entries in respect thereof, and do such acts and sign such documents as the Governor-in-Council may from time to time prescribe.

Certain persons and things connected with the Militia, Volunteer, and other Defence Forces are by Section 102 of "The Defence Act, 1886," exempt from tolls leviable at any pier, wharf, quay, landing place, ferry, or bridge, or at any turnpike gate or bar, or at any other gate or bar on a public road, as follows:—

- (1) Any officer, non-commissioned officer, or other member of the forces being on march or duty,

Proclamation requiring land to be kept free from obstruction does not vest such land in the Crown.

Registration of proclamation.

Persons, etc., engaged in militia or defence forces free from tolls.

Officers and members of defence force.

or going to or returning from the place appointed for and on the day of exercise, inspection, review, or other public duty, and being in uniform.

- (2) Any horse, when ridden or used by any such Horses. officer, non-commissioned officer, or other member on march or duty, or going or returning as aforesaid.
- (3) Any cart, waggon, or carriage, public or Vehicles carrying officers and men. private, employed only in carrying on conveying any such officer, non-commissioned officer, or other member being on march or duty, or going or returning as aforesaid, and being in uniform, with or without any conductor or driver of such cart, waggon, or carriage, or domestic servant of such officer, non-commissioned officer, or other member.
- (4) Any cart, waggon, or carriage, public or Vehicles carrying arms, baggage, etc. private, employed only in carrying or conveying, or returning empty from carrying or conveying, having been employed only in carrying or conveying any arms or baggage of any such officer, non-commissioned officer, or other member being on march or duty, or going to or returning from the place appointed for exercise, inspection, review, or other public duty, or any provisions or military stores belonging to or for the use of, or any gun belonging to or used by the forces, or any part thereof
- (5) Any horse or other animal drawing any such cart, waggon, or carriage as aforesaid, or any artillery.

“ If any person knowingly demands or takes any Penalty for falsely claiming exemption. duty or toll in contravention of the above section, or if any person makes any false representation respecting himself or any other person, or any animal or thing, with intent to obtain for himself or otherwise, or fraudulently obtain for himself or otherwise, any exemption under the above

section, he is for every such offence liable to a penalty not exceeding five pounds."

If any person is in illegal occupation of a public road or of any part thereof, and will not vacate possession, there is power under Section 275 of "The Public Works Act, 1905," on a plaint entered in a Stipendiary Magistrate's Court by the Minister for Public Works or the Minister of Lands, or by any person appointed by either or both, for the Magistrate to order that possession be given to the plaintiff; and if possession be not given, the Magistrate is empowered to issue a warrant, authorising and requiring the bailiff of the Court, or any constable, to give possession of the land to the plaintiff. In any case where a road is being illegally occupied, and the local body requires to obtain possession of the same, it should make application to the Minister for Public Works, with a statement setting forth the facts in full, and asking that authority to lodge such plaint be issued to some person to be named in the application. The local body is required in any such case to take all responsibility in the matter, and to prosecute the offender itself.

The Minister for Agriculture 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, is authorised to enter upon any district or county road traversing the line of such fence, or bounding any such lands, and to continue the construction of such fence across any such road or bridge on such road. Swing gates may be placed on the road, but so as not to unnecessarily interfere with public traffic. A board must, however, be placed on the gates with the words "Public Road" legibly painted thereon. Any one using such gate who leaves the same open is liable to a penalty not exceeding £5 for every such offence, and a notice of the penalty for leaving the gate open must also be legibly painted thereon. The above provisions do not, however, empower a private person to erect such a swing gate across a road or bridge without having first obtained the sanction of the local body having control of the road.

Illegal occupation of road.

Power to erect rabbit-proof fence and swing gates.

Penalty for leaving gate open.

The Governor has power to continue any line of roadway into or upon any land or harbour works vested in a Harbour Board or under its control. He may also lay down, construct and maintain thereon any railway or tramway or roadway to connect with such roadway, and no compensation is payable for the land so taken, so long as the work thereon does no material damage to any building thereon. If, however, such damage is done, or it is necessary to remove any building as aforesaid, compensation is payable to the Harbour Board (see Section 142 of "The Harbours Act, 1878," and Section 2 of "The Harbours Act, 1878, Amendment Act, 1904").

Power of Governor to continue any roadway on Harbour Board lands.

The Governor or the Governor-in-Council, the Minister for Public Works, and the Minister for Lands and the Land Boards have power to take land for roads or streets in certain cases, and in some instances there is power to legalise roads already in existence under the provisions of "The Public Works Act, 1905," "The Land Act, 1892," and several other enactments, but as this is a special subject in itself, it will be found dealt with in a later chapter.

General Powers of Governor or Government to take lands for roads, etc.

Every lease of land for a coalmine, issued by the Crown is subject to the stipulation that the Governor may, if he thinks fit, authorise the construction in or upon any land comprised in such lease, or any race, dam, road, tramway, or other works for public convenience (see Section 16 of "The Coal Mines Act, 1905").

Coalmine leases are subject to such right.

Section 17 of "The Land Act, 1892), gives the Governor power to supervise the laying off of streets in townships, whether upon Crown or private lands. This section enacts that in all towns which may be laid off in or upon any Crown lands or upon private lands outside a borough, the main streets shall be of a breadth not less than ninety-nine feet, and the cross or side streets shall be of a breadth not less than sixty-six feet, excepting only in the case of any existng town within or outside a borough having streets of a less breadth than sixty-six feet, with buildings bordering both sides thereof, in which case the Governor may authorise the extension of the aforesaid

Width of streets in townships.

streets at the existing breadth thereof. Provided, also, that in cases where towns have been laid out and have been in existence for a period of seven years since the same was laid out, and where the local authority had approved and formed any road or street of a less width than sixty-six feet, then in such case the Governor may in his discretion approve of such streets or roads.

This section having worked inequitably in some cases, it was amended by Section 2 of "The Towns Main Streets Act, 1902," as follows, viz.:—

"Where under the special circumstances of the case it is, in the opinion of the Minister of Lands, inexpedient that the main street or streets of any town laid off on private land or on Crown lands should be of a width of ninety-nine feet, as provided by Section 17 of "The Land Act, 1892." he may, by notice in the *Gazette*, authorise the laying off of such main street of such less width (but not less than sixty-six feet) as he thinks fit."

Applications under these sections should be made to the Minister of Lands, through the Chief Surveyor of the district in which the land is situated.

Where the Governor-in-Council has authorised the construction of a tramway under "The Tramways Act, 1894," the promoters of the tramway are under the following liabilities in respect to the construction of the work, so far as it affects the surface of roads or streets. These liabilities arise in pursuance of Clauses 14 to 17 of the second schedule of the Act, and they are as follows:—

Clause 14 provides:—

- (1) The promoters from time to time for the purpose of making, forming, laying down, maintaining, renewing, or extending any tramway duly authorised, may open and break up any road, subject to the following regulations:—

Provisions of Towns Main Streets Act as to width of streets.

To whom applications should be made.

Liability of tramway promoters as to roads or streets.

Promoters may break up road or street.

- (a) They shall give to the local authority notice of their intention, specifying the time at which they will begin to do so, and the portion of road proposed to be opened or broken up, such notice to be given seven days at least before the commencement of the work. Notice to be given.
- (b) They shall not open or break up or alter the level of any road except under the superintendence and to the reasonable satisfaction of the local authority, unless that authority refuses or neglects to give such superintendence at the time specified in the notice, or discontinues the same during the work. Local body may supervise the breaking up of road or street.

The Minister for Agriculture, 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, is authorised to enter upon any district or county road traversing the line of such fence, or bounding any such lands, and to continue the construction of such fence across any such road or bridge on such road. Swing gates may be placed on the road, but so as not to unnecessarily interfere with the public traffic. A board must, however, be placed on the gates with the words *Public Road* legibly painted thereon. Any one using such gate who leaves the same open is liable to a penalty not exceeding £5 for every such offence; and a notice of the penalty for leaving the gate open must also be legibly painted thereon. The above provisions do not, however, empower a private person to erect such a swing gate across a road or bridge, without having first obtained the sanction of the local body having control of the road. Swing gates in rabbit-proof fences.

The Governor has power to continue any line of roadway into or upon any land or harbour works vested in a Harbour Board or under its control. He may also lay down, construct and maintain thereon any railway or tramway or roadway to connect with such roadway, and no compensation is payable for the land so taken, so long as the work thereon does no material damage to any building Power to make road on Harbour Board lands.

thereon. If, however, such damage is done or it is necessary to remove any building as aforesaid, compensation is payable to the Harbour Board (see Section 142 of "The Harbours Act, 1878," and Section 2 of "The Harbours Act, 1878, Amendment, 1904").

Legalising roads
and taking land
for same.

The Governor or the Governor-in-Council, the Minister for Public Works, and the Minister for Lands and the Land Boards have powers to take land for roads or streets in certain cases, and in some instances there is power to legalise roads already in existence under the provisions of "The Public Works Act, 1905," "The Land Act, 1892," and several other enactments, but as this is a special subject in itself it will be found dealt with in a later chapter.

Road on lands
leased for
coalmine.

Every lease of land for a coalmine issued by the Crown, is subject to the stipulation that the Governor may, if he think fit, authorise the construction in or upon any land comprised in such lease, or any race, dam, road, tramway, or other works for public convenience (see Section 16 of "The Coal Mines Act, 1905").

Power of
Governor to
supervise width
of streets in
private
townships.

Section 17 of "The Land Act, 1892," gives the Governor power to supervise the laying off of streets in townships, whether upon Crown or private lands. This section enacts that in all towns which may be laid off in or upon any Crown lands, or upon private lands outside a borough, the main streets shall be of a breadth not less than ninety-nine feet, and the cross, or side, streets shall be of a breadth not less than sixty-six feet, excepting only in the case of any existing town within or outside a borough having streets of a less breadth than sixty-six feet, with buildings bordering both sides thereof, in which case the Governor may authorise the extension of the aforesaid streets at the existing breadth thereof. Provided, also, that in cases where towns have been laid out and have been in existence for a period of seven years since the same was laid out, and where the local authority had approved and formed any road or street of a less width than sixty-six feet, then in such case the Governor may in his discretion approve of such streets or roads.

This section having worked inequitably in some cases, it was amended by Section 2 of "The Towns Main Streets Act, 1902," as follows, viz. :—

Main streets may be of less width than 99 feet.

Where under the special circumstances of the case it is, in the opinion of the Minister of Lands, inexpedient that the main street or streets of any town laid off on private land or on Crown lands should be of a width of ninety-nine feet, as provided by Section 17 of "The Land Act, 1892," he may, by notice in the Gazette, authorise the laying off of such main street of such less width (but not less than sixty-six feet) as he thinks fit.

Applications under these sections should be made to the Minister of Lands, through the Chief Surveyor of the district in which the land is situated.

Application to be made to Chief Surveyor

Where the Governor-in-Council has authorised the construction of a tramway under "The Tramways Act, 1894," the promoters of the tramway are under the following liabilities in respect to the construction of the work, so far as it affects the surface of roads or streets. These liabilities arise in pursuance of Clauses 14 to 17 of the second schedule of the Act, and they are as follows:—

Liabilities of tramway promoters as to roads.

Clause 14 provides:—

(1) The promoters from time to time, for the purpose of making, forming, laying down, maintaining, renewing, or extending any tramway duly authorised, may open and break up any road, subject to the following regulations:—

Power to break and open road.

(a) They shall give to the local authority notice of their intention, specifying the time at which they will begin to do so, and the portion of road proposed to be opened or broken up, such notice to be given seven days at least before the commencement of the work.

Notice to be given.

(b) They shall not open or break up or alter the level of any road except under the superintendence, and to the reasonable satisfaction

Work to be done to satisfaction of local authority.

of the local authority, unless that authority refuses or neglects to give such superintendence at the time specified in the notice, or discontinues the same during the work.

Not more than 100 yards to be opened at one time.

(c) They shall not, without the consent of the local authority, open or break up at any one time a greater length than one hundred yards of any road.

Works which interfere with railway, etc., to be constructed and maintained by promoters.

(2) Where the carriage-way in or upon which any tramway is proposed to be formed or laid down is crossed by any railway or tramway on the level, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with such railway or tramway or the traffic thereon, shall be constructed and maintained (at the cost of the promoters) under the superintendence and to the reasonable satisfaction of the person or authority owning such railway or tramway, unless after notice, to be given by the promoters seven days at least before the commencement of such work, such superintendence is refused or withheld.

Promoters to pay for superintendence, etc.

(3) They shall pay all reasonable expenses to which the local authority is put on account of superintendence and inspection of the works.

Clause 15 provides:—

Further obligations of promoters.

(1) When the promoters have opened or broken up any portion of any road, they shall be under the following further obligations, namely:—

Work to be done with all convenient speed and roadway to be made good.

(a) They shall with all convenient speed, and in all cases within four weeks at the most (unless the local authority otherwise consents in writing), complete the work on account of which they opened or broke up the road, and (subject to the formation, maintenance, or renewal of the tramway) fill in the ground and make good the surface, and to the

satisfaction of the local authority, restore the portion of the road to as good condition as that in which it was before it was opened or broken up, and clear away all surplus paving or metalling material or rubbish occasioned thereby.

- (b) They shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night. Works to be lighted.
- (c) They shall bear or pay all reasonable expenses of the repair of the road for six months after the same is restored, as far as those expenses are increased by the opening or breaking up, and also the reasonable expenses to which the local authority is put on account of inspection. Expense of maintaining road to be borne for six months.
- (2) If the promoters fail to comply in any respect with the provisions of this clause, they shall for every such offence (without prejudice to the enforcement of specific performance of the requirements of this Act or to any other remedy against them) be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for each day during which any such failure continues after the first day on which such penalty is incurred. Penalty.

Clause 16 provides:—

- (1) The promoters shall at their own expense at all times maintain and keep in good condition and repair, with such materials and in such manner as the local authority shall direct, and to its satisfaction, so much of any road whereon any tramway belonging to them is laid as lies between the rails of the tramway; and where two tramways are laid by the same promoters in any road at a distance of not more than four feet from each other, the portion of the road between the tramways; and in every case Road between rails to be maintained by promoters.

so much of the road as extends eighteen inches beyond the rails of and on each side of any such tramway.

- (2) If the promoters abandon their undertaking, or any part of the same, and take up any tramway or any part of any tramway belonging to them, they shall, with all convenient speed, and in cases within six weeks at the most (unless the local authority otherwise consents in writing), fill in the ground and make good the surface, and, to the satisfaction of the local authority restore the portion of the road upon which such roadway was laid to as good a condition as that in which it was before such tramway was laid thereon, and clear away all surplus paving or metalling material or rubbish occasioned by such work, and they shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night.

- (3) If the promoters fail to comply with the provisions of this clause to the satisfaction of the local authority, the local authority, if it thinks fit, may itself, at any time after three days notice to the promoters, fill in the ground and make good the surface, and do the works necessary for the repair and maintenance or restoration of the road, to the extent in this clause above mentioned and the expense incurred by the local authority in so doing shall be repaid to it by the promoters.

Clause 17 provides:—

The local authority on the one hand, and the promoters on the other, may from time to time enter into and carry into effect, and from time to time alter, renew, or vary, contracts, agreements, or arrangements with respect to the paving and keeping in repair of the whole or any portion of the roadway of any road

If undertaking abandoned, surface of ground to be made good, etc.

If promoters fail work to be done at their expense.

Promoters may enter into contracts to repair road, etc.

on which the promoters shall lay any tramway, and the proportion to be paid by either of them of the expense of such paving and keeping in repair.

Clauses 19 to 22, and the whole of Part III. to the second schedule to "The Tramways Act, 1894," have indirect reference to roads and streets, as they contain the provisions under which gas and water mains, pipes, sewers, etc., under roads may be interfered with by the promoters of the tramway, and they also contain provisions as to security for maintenance of traffic. They also refer to default by the promoters, tolls, charges, by-laws, offences, accidents, and other matters relating to the running or discontinuance of the tramway. These matters, however, pertain more to tramways than to roads, and this work has not, therefore, been burdened with the details of the same.

In addition to the foregoing powers which the Governor or the Government may exercise over roads, there is also the power of veto in respect to roads proposed to be stopped by Road Boards or County Councils, granted by Section 133 of "The Public Works Act, 1905"; there is also the power to allow land which fronts on to a road or street less than one chain wide, to be sub-divided in certain cases under Section 117 of the Act; and there is power to take, open, and close roads under various enactments; but as these are specialities in themselves they will be dealt with separately in later chapters. There is also the power to veto by-laws in certain cases made by local bodies, but this has already been dealt with in a previous chapter that relates to the power of a Road Board over roads.