

CHAPTER XIV.

CLOSING OR STOPPING ROADS AND STREETS.

The statutory enactments which contain the power to stop roads and streets are to be found in Sections 112 and 129 to 138 of "The Public Works Act, 1905," in Sections 212 and 239 to 241, and the seventh schedule of "The Municipal Corporations Act, 1900," and in Section 13 of "The Land Act Amendment Act, 1893." The provisions in the Public Works Act relate to roads in road districts and counties, the provisions in the Municipal Corporations Act refer to streets in boroughs or town districts, and those in the Land Act relate, apparently, to any roads or streets, whether within or outside the boundaries of boroughs or town districts. Some slight doubt exists, however, as to whether or not the Land Act relates to streets in boroughs, as will be hereinafter mentioned, but the Act has so far been administered on the assumption that it refers to streets in boroughs as well as to roads outside boroughs.

Statutes that authorise closing of roads or streets.

There is no power to stop a road outside a borough unless and until a way to the lands in the vicinity, as convenient as that theretofore afforded by the said road, is left or provided, unless the owners of such lands give consent in writing to such stoppage; and there is no power to stop a road along the bank of a river outside a borough, either with or without consent (see Section 129 of "The Public Works Act, 1905").

No power to stop road unless another is provided.

There is also no power to stop up any street in a borough that runs along the bank of a river, or along the margin of the sea (see Sub-section 4 (h) of Section 212 of "The Municipal Corporations Act, 1900").

No power to stop road or street on river bank.

Power to temporarily stop road or street.

Notwithstanding these provisions there is, however, power to temporarily stop a road or street while such road or street or bridge thereon is being constructed or repaired (see Sub-sections 1 (g) and (h) of Section 112 of "The Public Works Act, 1905," and Sub-section 4 (i) of Section 212 of "The Municipal Corporations Act, 1900").

Definition of "river."

The question as to what constitutes "a river" is a somewhat difficult one, and it is not defined in the Public Works Act. In *Coulson and Forbes On Waters*, it is defined as a running stream pent in on either side (that is, on both sides) with weeds and banks. It includes, therefore, all natural streams, however small, which have a definite and permanent course. A river also extends from bank to bank, notwithstanding that the flow of the water is confined to a small channel in dry weather (see *Kingdom v. Hutt River Board*, 25, N.Z.L.R., 145).

Road or street can only be stopped by process of law.

There is no power for any one, either with or without the consent of the local authority, to stop or close a road or street that may have become a public highway in any manner whatever, provided it is a public highway. The only way it can be stopped or closed is by process of law, and if that has not been done the fact that the road has long ceased to be used as a highway, or that the land comprising such road may be included in a certificate of title issued under "The Land Transfer Act, 1895," which contains no mention of such road or street, will in no way prejudice the right of the public at any time to use such land as a road or street, if in fact it ever became a public highway, for "Once a highway, always a highway." (See *Mayor, etc., of Onslow v. Rhodes and another*, 23, N.Z.L.R., 653; also *Mayor, etc., of Lower Hutt v. Yerev*, 24, N.Z.L.R., 697; also *Daddy v. Coromandel County Council*, 16, N.Z.L.R., 188; and *McLachlan v. Hughes*, 25, N.Z.L.R., 221.) If a road is too wide, and it is necessary to diminish its width, such excess width must be stopped by process of law (see *In re the Selwyn County Council*, 5, L.R., C.A., 163).

To lease a road is to partially stop it.

It appears, also, that to lease a road is to partially stop it, and that such a lease can be restrained by injunction. Thus in the case of *The Attorney-General v. Hobson County*

Council (12, L.R., 328) the facts showed that in the year 1880 certain land was duly taken by proclamation for the purposes of a road. The road so taken varied in width from one chain to nearly two chains, at a point running along the bank of a river. The road was formed one chain in width for its entire length, leaving that portion of the land which abutted on the river in its unimproved state. The local authority called for tenders for a lease for one year of a section of the unimproved land extending from the river bank to the formed road.

In that case the Court held—

- (1) That a road was a public work within the meaning of Section 17 of "The Public Works Act, 1882."
- (2) That, though no injury is likely to arise from the action sought to be restrained, an injunction will be granted where direct disobedience of a statute is in question.
- (3) That diminishing the width of a road as taken by leasing a part of it along a river was a stoppage of a road within the meaning of Section 93 of "The Public Works Act, 1882."

The provisions of "The Public Works Act, 1905," relating to closing or stopping roads may be divided into two classes, viz.:—(1) Roads that may be closed by consent of the ratepayers generally; and (2) Roads which may be altered by consent of the adjoining owners of land, and in order to do this the whole or any part of the existing road has to be stopped.

The provisions of Section 13 of "The Land Act, 1892," relate entirely to the legalization of new roads or streets, or the deviation or alteration of existing roads or streets, where the local body and the adjoining land owners consent.

The Government is not bound by any of these provisions (except as to river bank roads), but may by proclamation publicly notified without further process stop or alter the course of any Government road, or any part thereof, and may dispose of the land occupied by such road,

Two classes of roads to be closed.

Section 13 of Land Act relates to new roads or to deviations.

Government not bound by above provisions but may summarily close road.

or part of the road, so stopped or altered (see Sub-section (c) of Section 133 of "The Public Works Act, 1905"). In cases, also, where land has been acquired under "The Lands for Settlement Consolidation Act, 1900," and where, on the report of the Surveyor-General, it appears that unformed and unused road lines intersect any such land, and are not suitable to the subdivision of the land, the Governor, by notification in the *Gazette*, may close such road lines and declare them to be subject to such Act, and thenceforth they are deemed to be portion of the land acquired as aforesaid, and may be disposed of accordingly (see Section 69 of "The Lands for Settlement Consolidation Act, 1900").

Provisions as to closing county or district roads.

The following are the provisions in the Public Works Act relating to the closing of roads, and they are applicable to either county or district roads, and in the former case the term "County Council" or "Council" is to be read wherever the term "Road Board" or "Board" respectively occurs therein (see Sub-section 1 (a) of Section 106 of "The Public Works Act, 1905").

Procedure for stopping road by consent of ratepayers.

Section 130 of the Act provides for the stopping of a road by consent of the ratepayers, and is as follows:—

"No road under the control of a Road Board shall be stopped except in the manner and upon the conditions following:—

Plan.

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

Plan to be open for inspection.

(b) The said plans shall lie open to public inspection at the office of the Board, or other convenient place during eight consecutive weeks, and the Board shall once in each week during such eight weeks, give public notice of the proposed alteration, and of the place where the plans are on view.

Notice to be placed at each end of road.

(c) A notice of the proposed stoppage, printed on linen or calico, shall be fixed in a conspicuous place at each end of the road to be stopped.

- (d) A copy of the aforesaid notice and plan shall be transmitted by the Board for record in the office of the Chief Surveyor of the district, and no notice of the stoppage or diversion of any road shall take effect until the said notice and plans have been recorded as aforesaid. Notice to be sent to chief surveyor.
- (e) The Board shall, by public notice, call a meeting of the ratepayers of the district, to be held on any day after the expiration of fourteen days after such notice. "Ratepayer" means any person entitled to vote at the election of a member of the Road Board. Meeting of ratepayers.
- (f) The chairman of the Road Board, or, in his absence, some other member of the Board appointed by the meeting, shall preside thereat; and such meeting shall decide by a majority of the ratepayers present whether or not the road shall be stopped. Chairman to preside.
- (g) If the meeting decide that the road be not stopped, such decision shall be final, and no proceedings for stopping such road shall be taken by the Board for one year thereafter. If the meeting decide that the road may be stopped, the Board shall send the plans aforesaid, with a full description of the proposed alterations, and with their decision thereon, to the County Council. Decision of meeting.
- (h) The County Council shall 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 ratepayers; and the decision of the County Council shall be final and conclusive on all questions, including the question whether the condition prescribed in Section 129 of "The Public Works Act, 1905," has been complied with. County to consider matter.
- (i) If the Council reverse the decision of the ratepayers, no proceedings shall be entertained If decision reversed by Council.

by the County Council for stopping such road for two years thereafter.

- (j) If the County Council confirm the decision of the ratepayers, the Board may declare, by public notice, that the said road is stopped; and such road shall thereafter cease to be a public highway. (This cannot, however, be done until the proposal is assented to by the Governor-in-Council under Section 133 of the Act, as hereinafter mentioned.)

If decision confirmed by Council.

Provisions of Section 130, "Public Works Act, 1905," are imperative.

The provisions of "The Public Works Act, 1880," Section 4 (now Section 130, of "The Public Works Act, 1905"), with respect to the stoppage of roads, are imperative, and a mandamus will not issue to compel the chairman of a County Council to certify that a road has been stopped, where the provisions of the law have not been fully complied with (see *Reg. v. Roberts*, 1, L.R., S.C., 176).

The decision of a County Council that a road is to be stopped is final.

The decision of a County Council under Section 130 of "The Public Works Act, 1905," confirming a decision of ratepayers that a road shall be stopped, is final, and not subject to review in any Court. (This decision must, however, be read in the light of the fact that no county or district road can now be stopped without the consent of the Governor-in-Council.) The County Council, in order to perform its duty under that section, must in the first instance consider and determine whether a way to the lands adjacent as convenient as that theretofore provided by the stopped road is left or provided, as required by Section 93 of the same Act, and its decision upon this question is also final (see *Clive Road Board v. Guy*, 9, L.R., C.A., 521).

Procedure where adjoining owners consent.

Section 131 of "The Public Works Act, 1905," gives the procedure for altering the course of roads where the adjoining land owners consent, and is as follows:—

Where a Road Board determines to alter the course of an existing road, and the owners of land on each side of such existing road agree to such alteration:—

- (a) The Board shall have a plan prepared of the Plan.
road proposed to be stopped, and a survey
made and a plan prepared of the new road,
if any, showing the lands through which it
it is proposed to pass, and the owners and
occupiers of such lands so far as known.
- (b) The said plans shall lie open to public inspec- Plan to lie open
for inspection.
tion at the office of the Board, or other
convenient place, during four consecutive
weeks, and the Board shall, once in each
week during the said four weeks, give public
notice of the proposed alteration, and of the
place where such plans are on view; and in
such notice shall call upon all persons having
any objection to the proposed alteration to
lodge such objection in writing in the office
of the County Council within the four weeks
aforesaid.
- (c) At the expiration of the said four weeks the Plan to be sent
to County.
Board shall send the plans mentioned in
paragraph (a) hereof, with a full description
of the proposed alterations, to the County
Council, and the Council shall consider the
proposed alterations and any objections
lodged thereto, and shall prohibit or permit
the proposals of the Board; and the decision
of the Council shall be final, and, in the event
of its being adverse to the proposals of the
Board, no further action shall be taken by
the Board therein for one year thereafter.
- (d) If the decision of the Council is in favour of Decision of
County.
the proposals of the Board, the Board may,
by resolution publicly notified, declare the
existing road to be stopped between the
points where such alteration is proposed,
and the road so declared to be stopped shall
thereafter cease to be a public highway.
(This resolution is, however, ineffective unless
and until the Governor-in-Council has con-

seuted to the stopping of the road—see Section 133 of the Act.)

- (e) The Board may thereupon agree with the owners of the land on either side of the road so stopped either to exchange the land occupied by the closed road (or any part thereof) for the land to be used for the new road (or any part thereof), or to pay compensation for the land required for the new road (or any part thereof), or to sell the land occupied by the closed road (or any part thereof) to any of the adjoining landholders, or to sell the same (or any part thereof) in the manner provided in Section 134 of the Act.

Exchange of land with adjacent owners.

Provisions must be strictly complied with.

The provisions as to stopping roads in Sections 130 and 131 above must be strictly complied with. (See *Reg. v. Roberts*, 1, L.R., S.C., 176; and *Clive Road Board v. Guy*, 9, L.R., 521; and *In re Mary Symons v. Mayor, etc., of Foxton*, 7, Gaz L.R., 477, and 25, N.Z.L.R., 59.)

Cases where Magistrate acts for County Council.

When the Counties Act is suspended in any county, the term "County Council" in Sections 130 and 131 of the Act means the Stipendiary Magistrate exercising jurisdiction in the district wherein the road proposed to be stopped is situated, and he then has all such powers of a County Council as are applicable in any such case. (See Section 132 of the Act.)

Consent of Governor-in-Council necessary.

There is a very important provision in Section 133 of the Act to the effect that notwithstanding anything contained in Sections 130 and 131 of the Act, a local authority shall not declare any county or district road to be stopped, and such road shall not be deemed to be stopped, until the consent thereto of the Governor-in-Council is obtained, and the District Land Registrar is required to refuse to issue any title for a closed road unless a copy of the Order-in-Council consenting to the stopping of the road is filed in his office. The effect of this provision is to place upon the Governor-in-Council the ultimate decision as to whether or not a road is to be stopped, and if the Governor-in-Council do not consent, the road cannot be stopped, and

is in fact not stopped even though the Road Board or County Council may have declared it to be stopped.

An application for such consent should be made to the Minister for Public Works after the local body has taken the steps required by Sections 130 or 131 to stop the road, and the application should be accompanied by a plan of the road, together with reasons showing why the road is to be stopped, and showing also that a road in the vicinity as convenient as the one to be stopped has been provided.

Application for consent to be made to Minister of Public Works.

If consent be given to the road being stopped, it may be sold under Section 134 of the Act, in the following manner:—

Conditions upon which stopped road may be sold.

The land occupied by any road stopped under Section 130, or stopped under Section 131 of the Act, and agreed to be sold under this section, may be sold under the following conditions:—

- (a) The Chairman of the County Council or the Magistrate, as the case may be, shall, in writing under his hand, certify that the said road has been stopped as by law required, and order that the same shall be sold.
- (b) The Road Board shall cause the land proposed to be sold to be valued by one or more competent valuers, and shall offer such land, at the price fixed by such valuation, first to the person then entitled to the land from which such land was originally severed; and if he refuse it, or cannot after due enquiry be found, then to the owner of the adjacent lands; or if there be more than one such owner, then to each of such owners in such order as the Board thinks fit; and if no such owner accept such offer, may cause the land to be sold by public auction.
- (c) The purchase-money of lands so sold shall be paid into the District Fund, and shall form part of such fund.
- (d) Upon payment of the purchase-money the chairman of the Road Board shall file in the

Certificate of County Chairman.

Land to be valued.

Money to be paid to District Fund.

Memo of transfer.

District Land Registry Office for the district in which such land is situate, a copy of the order directing the sale of the said land, together with a map thereof certified in the manner required by Paragraph (a) of Section 19 of the act, and shall indorse thereon a certificate of the payment of the purchase-money, with the name and address of the purchaser; and such copy of the order so indorsed shall be deemed to be a memorandum of transfer of such land to such purchaser within the meaning of "The Land Transfer Act, 1885," and the Registrar shall register the same and deal therewith in the manner in the said Act provided. (The Board must also show that the Governor-in-Council has consented to the stoppage of the road—see Section 133.)

The land contained in any stopped road may be exchanged for other land under Section 135 of the Act, as follows:—

- (1) The land occupied by any road stopped, either under Section 130 or under Section 131 hereof may be exchanged for other land under the following conditions:—
 - (a) The Board may agree with the owner or owners of any land required for a road, to be made in lieu of a road stopped as herein provided, to exchange the whole or any part of the land occupied by such last mentioned road for the whole or any part of the land so required.
 - (b) The chairman of the County Council, or the Magistrate, as aforesaid, shall certify in writing under his hand that such road has been stopped as by law required.
 - (c) The chairman of the Road Board shall indorse on a copy of such certificate that the land occupied by such road so stopped has been exchanged for other land, and the name and address of the exchange.

Conditions upon which stopped road may be exchanged.

Agreement with owner.

Certificate of Chairman of County.

Certificate to be endorsed.

(d) And such copy of certificate so indorsed, together with such map as is mentioned in Paragraph (d) of the last preceding section, shall, when filed in the District Land Registry Office for the district in which such land is, be dealt with in the manner directed by the said paragraph, and shall confer upon the exchangee the same rights and titles as are therein mentioned. Memo of Transfer.

(2) No stamp duty, or registration or other fees, shall be charged or payable upon or in respect of any certificate of title or copy thereof made and issued under the provisions of this section. No duty or fees to be charged.

If a road is proposed to be stopped upon the motion and solely for the convenience of any private person, such person shall pay all the costs incurred thereby, including the cost of constructing a new road, if, in the opinion of the Board such new road is necessary in the place of the road stopped; and the Board shall take no steps towards stopping such road until such person pays into the District Fund the whole estimated cost of the proposed alteration (see Section 136 of the Act). Private person requiring road stopped must pay all costs.

Apart from any power of sale by the local body, the Governor is empowered by Section 137 of the Act to sell or exchange any roads stopped under any Act or provincial ordinance, and by Section 138 of the Act the Governor is empowered to perfect the sale or exchange of any road so stopped. These two last sections principally apply to roads stopped in the times of the Provincial Councils, prior to 1876, but which have never been disposed of, and some such closed roads are still in existence. These sections are not, however, limited to roads closed at that time, and still have operation, especially if the Government itself causes a road to be declared a Government road, and then stops it under Section 133 of the Act, and, as described before this can be done without any consent or otherwise by the local authority in whose district the road is situated. Power of Governor to perfect sale or exchange.

Simple procedure for taking or deviating road under "Land Act, 1892."

Section 13 of "The Land Act, 1892," empowers the closing of a road not required by reason of a new road which has been opened under that section. It is usual to open and close the roads by the same proclamation, but it is not absolutely necessary that it should be done in that manner, and a proclamation can be issued opening a new road, and a subsequent one issued closing the old one. The essential thing is that the road to be closed is not required by reason of the road which has been or is being legalized under the Act. The provisions of Section 13 of the Land Act are very much simpler, and the procedure is very much shorter and cheaper than is the case under the corresponding sections of the Public Works Act, so that this section is now almost always taken advantage of by local bodies, either to open up a new road or to exchange lands for roads, where all parties agree.

Provisions of Section 13, "Land Act, 1892."

Section 13 of "The Land Act, 1892," as amended by Section 2, Sub-section 1 of "The Land Act, 1893," is as follows:—

The Governor, by notice in the *Gazette*, may from time to time proclaim as a street or road—

Crown Lands.

(1) Any portion or portions of Crown lands; or

Reserves and trust lands.

(2) Any portion of any reserve, endowment, or trust lands, with the consent of the local authority, body, or persons respectively, in whom such lands are vested; or

Private lands.

(3) Any portion of private lands, with the consent of the owner thereof, or his trustees; and if the land under this or the last-preceding sub-sections be leased, then with the consent, also, of the lessee, or any portion of Crown lands held under lease or license, or sold under deferred payments, with the consent of the lessee or licensee.

proviso.

Provided that Sub-sections 2 and 3 above shall only be applied with the consent of the Road Board, or County Council, if there be no no Road Board or other local authority in

whose districts the lands are situated. And the lands upon which such street or road shall have been proclaimed shall be and be deemed to be thenceforward dedicated to the public; and by like notice, but subject to the like consent as aforesaid (the Governor), may close any street or road not required by reason of any notice as herein first mentioned, and may grant such closed road in exchange for a road taken hereunder, and the Crown grant or other instrument of title may be amended accordingly by indorsement under the provisions of "The Crown Grants Act, 1883," or by indorsement by the Commissioners of Crown Lands under the authority of the Land Board, on any lease or license from the Crown, provided, however, that lands given by the Crown in exchange for lands held under lease or license from the Crown shall, unless the Governor otherwise directs, be held by the licensee or lessee only on the same terms and subject to the same conditions as the land given in exchange by him is held.

An application under any of the foregoing sections, viz., both under the Public Works and Land Acts, should be made to the Hon. the Minister for Public Works. Such application should be accompanied by plans and schedules in duplicate of the road or lands to be dealt with, signed as correct by the Chief Surveyor of the district, and it will save time if also the local body obtains upon the plans the recommendation of the District Road Engineer of the district before sending it to the Minister. When forwarding such plans to the Minister, the local body should give reasons in full showing why the road is required to be deviated, exchanged, or closed, and showing also that it is required to be closed in the public interest, and that the public will not suffer thereby. A proposal to close a road, merely because the adjacent land owner wants it closed, is not

Application for authority to close or deviate roads to be made to Minister of Public Works.

usually approved unless it can also be shown that the public will in some way benefit thereby.

Owner, lessee,
and mortgagee
must consent.

In cases under Section 13 of "The Land Act, 1892," the consent of the local body, the owner, lessee, mortgagee, or of any other person having any registered or known interest in the land adjacent to the road to be closed or opened must be obtained, and these consents should be endorsed upon the plan, and each consent must clearly show (1) the land or road to which it refers; (2) that consent is given to the taking of the land for the new road and for closing the old road (either without compensation, or for a definite sum to be stated in the consent); (3) that the land of the closed road is to be granted to some person named therein. This person should be the owner of the adjacent land, or if there be more than one such adjacent owner, then the consent should show to which of them the land is to be granted, or how it is to be divided between them. If the adjacent holder is not the owner, but simply holds as lessee under some leasehold interest derived from the Crown, the consent should state the nature of the interest in the land to be granted to such lessee, and that interest should be of the same nature as the interest he has in such adjacent land.

Signatures to
be witnessed.

The signatures of all persons consenting should be witnessed, and the attesting witness should add his address and occupation.

District road
engineers will
assist local
bodies.

These provisions seem at first sight somewhat extensive and cumbrous; but in practice they are simple and easily complied with, if reasonable care be taken first of all to ascertain what is required. The various District Road Engineers are instructed to give local bodies whatever assistance they can in complying with these requirements.

Commissioner
and District
Land Registrar
to adjust titles.

After a proclamation has been issued, a copy of it is sent by the Roads Department to the Commissioner of Crown Lands and to the District Land Registrar of the district, and the duty of adjusting the title to give effect to such proclamation devolves upon these officers, and in the event of delay after the proclamation has been issued, application should be made to them accordingly.

CLOSING STREETS IN BOROUGHES.

As before stated, Section 13 of "The Land Act, 1892," is believed to authorise the exchange of land for streets in boroughs and town districts, as well as for roads outside of boroughs, etc.; but as Sub-section 3 of the section mentions County Councils and Road Boards, but does not mention Borough Councils, doubt has therefore been cast upon the section as giving the necessary powers to deal thereunder with streets in boroughs. The sub-section refers, however, to other "local authority," and this, coupled with the distinct reference to "street" in the first governing paragraph of the section, and the fact, also, that "local authority" is defined in Section 2 of the Act to include a Borough Council) has been hitherto taken as sufficient to authorise the exchange of lands for streets in boroughs.

Power to deviate streets under Land Act.

Apart from the Land Act, the statutory provisions that undoubtedly apply to closing or deviating streets in boroughs and town districts is to be found in Sections 212, 239 to 241, and the seventh schedule to "The Municipal Corporations Act, 1900."

Power to close or deviate street under Municipal Corporations Act.

Sub-section 3 (h) of Section 212 of the Act gives power to a Borough Council "to wholly stop up any street, or part of a street, in the manner and upon the conditions set out in the seventh schedule to the Act: Provided that no street along the bank of a river, or along the margin of the sea, shall be stopped."

The seventh schedule to the Act is very much to the same effect as Section 230 of "The Public Works Act, 1905," and is as follows:—

- (1) The Council shall prepare such plans, give such notices, and make such deposits as are prescribed (i.e., prescribed by regulations. The regulations are to be found in the *Gazette*, of May 15th, 1902. They are important, and are set out below. See especially Regulation 4).
- (2) The Council shall by public meeting call a meeting of the electors.

Plans.

Meeting of electors.

Mayor to
preside.

(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.

Decision of
meeting.

(4) If the meeting decide that the street be not stopped, no proceedings 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 alterations, and with their decision thereon, to the Stipendiary Magistrate.

Stipendiary
Magistrate to
finally decide.

(5) The Stipendiary Magistrate shall 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 on all questions.

Convenient
way to be
provided.

(6) The Stipendiary Magistrate shall not confirm the decision of the electors unless he is satisfied that a convenient way to the lands in the vicinity of the said street is left or provided.

If Magistrate
reverse
decision.

(7) If the Stipendiary Magistrate reverse the decision of the electors, no proceedings shall be entertained by the Stipendiary Magistrate for stopping such street for two years thereafter.

If Magistrate
confirm
decision.

(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.

Regulations.

The regulations referred to in No. 1 above read as follows:—

(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.

- (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 seventh schedule to "The Municipal Corporations Act, 1900," 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.
- (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.
- (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 or diversion of the street shall take effect until such record is made.

It is necessary to point out that all these requirements must be strictly complied with, for in the case of *In re Mary Symons v. Mayor, etc., of Foxton* (7, Gaz. L.R., 477; 25, N.Z.L.R., 59) the Supreme Court held that the omission to pass a special order in the manner required by the Act, vitiated the whole proceeding, and that the street had not been closed at all. This case is instructive, and the digest of it in the Gaz. L.R. is as follows:—

"The Foxton Borough Council took steps, by virtue of 'The Municipal Corporations Act, 1900,' to close a street in the borough, but omitted to pass a special order, as required by Section 239 of that Act. A resolution only was passed, and the matter then came before the Magistrate, who performed the duties cast upon him by the seventh schedule of the Act, and issued an order under Sections 5 and 8 thereof. A claim for compensation under 'The Public Works Act, 1894,' for loss of frontage and reduction of access was served on the Council, addressed to 'The Foxton Borough Council.' No notice of non-admission of the claim was given, and after the time mentioned in the statute, the claim was filed under Section 44 of 'The Public Works Act, 1894.'

Requirements of law must be strictly complied with.

Example shewing how failure to strictly comply will vitiate proceedings.

The Registrar at Wanganui amended the claim by altering the name of the respondent to 'The Mayor, Councillors and Burgesses of the Borough of Foxton,' and gave judgment for the claimant. It was clear that the Registrar had no power to amend the claim, and give judgment, but it was argued that the claim and receipt of service could be held to be an award, and the judgment treated as a nullity. The grounds for the motion to set aside the judgment were:—

(1) That the stopping of a street was not a public work, and therefore no compensation was payable. (2) That the street was not closed, as no special order was passed. (3) That the claim was addressed to 'The Foxton Borough Council,' and that, therefore, the Corporation was not bound by it. (4) That the Registrar had no power to amend the name of the respondent. *Held*, that the Magistrate's order under Section 5 of the seventh schedule was not conclusive as to the regularity of the Council's proceedings, and that as the street had not been closed by special order, the Corporation could not be held liable. The award and judgment were therefore set aside. No opinion was expressed as to whether compensation would be payable if the street had been properly closed. *Held*, also, that the action of the Registrar was without jurisdiction."

Owners
injuriously
affected by
closure of street
entitled to
compensation
or injunction.

The owners of or persons having an interest in land injuriously affected by the closing of a street by a Borough Council are apparently entitled to compensation at the hands of the Council. (See *In the matter of "The Public Works Act, 1894*, and *In the matter of a Compensation Claim by Mary Symons*, 8, Gaz. L.R., 460; but see the dicta of Prendergast, C.J., in the case of *Clive Road Board v. Guy*, 9, L.R., C.A., 521, which state that if a road is stopped without a way as convenient to adjacent lands being left or provided, there is no right to compensation, and the remedy is by injunction.)

POWER TO LEASE ROADS.

To lease unused roads is in a certain sense to partially stop them. There seems, however, that there is power to do this, although the matter is not free from doubt. Whatever power there is is apparently contained in Section 33 of "The Public Works Act, 1905." This section gives

Power to lease
roads.

a general authority to lease land taken for a public work, but which is not required for immediate use for such work. A road is a public work, and if the land for same has been taken within the meaning of that enactment, or any other Act or Provincial Ordinance for the public work, and it is unused, then the section will presumably apply. By Section 12 of the Act it is provided that "taking" land includes the power to set apart, or procure the setting apart, of Crown land for a public work, and Section 101 of the Act shows how Crown lands are set apart for roads, viz., by being laid out and shown on the record maps, and lands taken for a public work, but which are unused, can be leased for any period not exceeding 21 years (see Section 33 of "The Public Works Act, 1905"). This being so it would appear that the provision applies to all roads that are taken within the meaning of the Act, but as the leasing cannot be in derogation of the public rights, it is suggested that a road in use by the public ought not to be leased, and that in any lease of an unused road the right of the public to use it at any time as a road or highway should be reserved in the lease, and power should also be taken to determine the lease at any time if the road is required to be opened for general use. The power to lease land for a road does not apply to a river bank road (see *The Attorney-General v. Hobson County Council*, 12, N.Z.L.R., 328). In that case certain land had been taken by proclamation for a road. It was on the bank of a river, and it varied in width from one chain to nearly two chains, and it was formed through its entire length one chain wide.—leaving the portion of the land which abutted on the river in its unimproved state. The local body leased part of this last mentioned land under the powers conferred by Section 17 of "The Public Works Act, 1882" (which are the same as those contained in Section 33 of "The Public Works Act, 1905"), but the action of the local body was disallowed by the Court on the ground that a road on a river bank cannot be closed (see Section 129 of "The Public Works Act, 1905"), and the Court held that the leasing of such land was a partial stoppage. The Judge, however, is reported to have stated that but for the fact that the road was a river bank road, he would have given judgment for the local body.