

**A TREATISE**  
 UPON  
**THE LAW**  
 OF  
**ROADS, BRIDGES, AND STREETS**  
 IN NEW ZEALAND

BY

**W. S. SHORT**

*A Solicitor of the Supreme Court of New Zealand,*

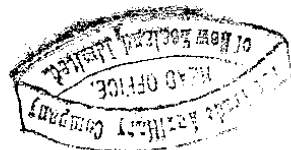
*and a Commissioner appointed under  
 "The Commissioners Act, 1903," "The Public Works Act, 1905,"  
 "The Municipal Corporations Act, 1900," and other Acts.*

*Chief Clerk of the Department of Roads, Etc.*

1907.

PRINTED BY  
 THE TIMARU POST NEWSPAPER COMPANY, LIMITED,  
 STAFFORD STREET, TIMARU.

1907.



COUNTY CLERK, TIMAPEKA COUNTY.

**THE RIGHTS OF THE PUBLIC TO USE ROADS AND STREETS.**

How road rights arise in N.Z.

These rights in New Zealand arise, first of all, from the English law in force at the date of the constitution of the Colony in 1840, and which was then applicable to the Colony (see "The English Laws Act, 1858"). "The Highways Act, 1835," 5 and 6, William IV., Chapter 50, which was the statutory law in England in 1840, and is so still, does not seem to have ever applied to the Colony, and the law in New Zealand is therefore based on such part of the English law as was applicable to the circumstances of the Colony in 1840, supplemented by various statutes passed in New Zealand since that date.

Public right to use highway.

The public has a right to use a highway only for the purpose of passing and repassing along the same, with or without vehicles, horses, cattle, etc., and not to enter it for any other purpose. No one has the right to occupy the soil of a highway which does not belong to him by right of ownership. If he does so he is in law a trespasser; and though, as one of the public, he has a right to be on the highway, he must move on. There may be a user of a highway for the purpose of pleasure, but if the person stand still and obstruct the passage of others he may render himself liable to indictment or penalty (see "The Law of Highways," Glen, 1897, p. 66). A right of passage extends over the whole surface of the road; but the local body has the right to determine what part of the road shall be a footpath or footway, and what part shall be for horses, cattle, vehicles and carriages (*ibid.* page 67).

Rights of foot passengers.

A foot passenger has a right to cross the carriageway, and persons driving vehicles along the road are liable if they are not careful to avoid driving against the foot passengers who are crossing the road. A man has the right to walk on the carriage way if he pleases, but it is to be assumed that if he does so, when there is a pathway in fair condition, and he gets injured he might find it very difficult to prove that he himself had not contributed to the accident by his negligence. The carriage way is a way for foot passengers as well as for vehicles, and the drivers of such vehicles must exercise reasonable care.