

Road and Way

**An analysis of these expressions in the Highways and related
Acts of Parliament c1500 to 1929**

**with notes on uses of these words in
Dictionaries and Relevant Documents of the Period**

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An analysis of some of the Highway Acts to determine the use of the words “driftway”, road, bridleway, highway etc over the period c1500 to 1929.

Early Highway Acts do not attempt to define the terms they contain, and use different terms within the same Act with considerable freedom. The 1835 General Highways Act is the first that sets out a comprehensive definition of terms in its introduction. Not surprisingly, the use of words changes considerably over the period under review and accordingly the analysis has been broken down roughly by century. To understand the changing use of words as seen in the Acts, it is of course necessary to observe the parallel changes going on in the ordinary usage and examples from contemporary dictionaries and travel literature are given. By 1929 the Acts of Parliament dealing with highways were taking a wider view of definitions, and the Local Government Act of that year introduces some confusion into what exactly is meant by the terms road and highway.

Road and Way.

“Way” was a word of Anglo-Saxon origin (weg) and was universal until the end of the 16th century.

D Hey says: “Before the seventeenth century highways were rarely described as roads. Shakespeare uses ‘road’ in only one of his plays, and the word is found only once in the Authorized Version of the Bible.....as early as 1617 the route from Rotherham to Whiston was described as ‘the Auncient Rode way or London way for carryers’, and in 1644 the justices of the peace for the West Riding mused over the poor state of ‘the public road from Bakewell to Wakefield’. W B Crump has suggested that the new word became popular after John Ogilby’s ‘Book of the Road’ was published as *Brittania depicta* in 1675.”¹

Thereafter, “road” starts to find its way into common parlance, becoming commonplace at the time that turnpikes start to be promoted in earnest i.e from c1740 onwards. However, “way” persists to this day in combination with either “motor”, “high”, “bridle” or “by” in legal definitions. Road is nowadays generally used in the UK to describe a vehicular route, and is not understood to apply to routes with restricted users unless qualified viz “bridle road”, “cycle road” etc. but as will be seen below this has not always been the case, the 1929 Local Government Act for instance confusing the issue. Roads can have names, such as “snuff road”, “wool pack road”, but these are names, not definitions.

This ambiguity between ‘way’ and ‘road’ has persisted throughout the 300 years that the two words have co-existed and has caused some confusion. This present analysis is intended to show that this ambiguity can be dispelled, at least for some periods of historical time with the aim of enabling maps and other documents to be accurately interpreted by reference to what was understood at the time they were prepared in the 16th, 17th 18th and early 19th centuries.

¹ “*Packmen, Carriers and Packhorse Roads*” D Hey 1980

Drift and driftway.

The word ‘driftway’ is a very rare visitor to Highway Acts, and on the occasions it does appear in the mid 18th century there is no definition of it. To understand its significance therefore at that time, it is necessary to try to relate it to common usage and its context. It is also notable that it has disappeared out of the statutes altogether by the 19th century.

In the analysis which follows, quotations are in standard font, and the author’s comments are in italics.

The Acts reviewed - 16th and 17th century.

1522 14 and 15 Henry VIII c 6 An Act for George Guldford to lay out a new way.

“That there is, and of time thereof the Mind of Man is not to the contrary hath been, an old Common Way or Street for Carriages.....”

A “Common Way” and a “Street” are implied as vehicular terms.

1534 26 Henry VIII c 7 Highways (Sussex).

Recites the above Act of 1522 as the basis for laying out “new Ways and Streets” in Sussex

The words are still similar, but “common” has been dropped.

1555 2 & 3 Phillip and Mary c8 “An Acte for thamendynge of Highe Wayes.”

(This was re-enacted and made “perpetual” by 29 Eliz c5 & 2, and repealed by 7 Geo 3 c 42 and 13 Geo 3 c 78)

“For amending of Highwais being nowe bothe verie noysome & tedious to travell in & dangerous to all Passengers and Cariages;.....”

Only the word Highways (variously spelt!) is used in this Act, and as shown above there is a direct connection between this word and the use by “passengers and cariages” (sic) i.e. at this date “highway” implied vehicular rights .

1601 43 Eliz c 4 Charitable uses

This Act makes reference to Highways and Causeways as well as Bridges as objects of charity.

1640 “The high roade way from Halifax, Bradford, Leedes and Wakefeild unto the markett towne of Selby and the towne of Kingston upon Hull, which causey is two miles in length, and soe extraordinarily broken and decayed with cartes and carriages.....”²

This is an example of the problems where a raised horse-causey existed alongside a miry general purpose way - the “high roade way”, such that waggons etc were tempted to use the narrow horse-causey, resulting in the destruction described. This problem was specifically addressed in the Act of 1773 s LIII (see below). This example supports the view that ‘roade’ was vehicular as no attempt is made to restrict its use despite the problems.

1632 Quarter Sessions Winchester re repair of Woolsbridge on Hants/Dorset border.

In this year there was a grand jury presentment for the repair of Wools Bridge “on a greater rode-way from the Western partes”. This location was on the pre-turnpike main road from Wimborne to Ringwood.

1662 13 & 14 Car 2 c6 “An Act for enlarging and repairing Common Highways.”

(This deals with responsibility for repair of Highways, and lays down tyre widths etc for use on waggons; i.e there is implied to be a direct relationship between Highways and Waggons).

1670 22 Car 2 c 12 Bridges Act.

“For the better repairing of and amending of the Highways now generally spoiled by the extraordinary and unreasonable lading of Waggons and other Carriages.....”

At this date Highways clearly implies vehicular use; that is why the Act is passed.

“S VIthat from and after the four and twentieth day of June next ensuing, no Travelling Waggon, Wain, Cart or Carriage wherein any Burthens, Goods and Wares are or shall be carried (other than a long list of exceptions,were limited to five horses or oxen)..... on any Common or Publick Highway or Road”.

This appears to be the first reference to Road in a statute, and equates it to a Common or Publick highway and predates Ogilby’s road book by just five years. The 1555 and 1662 Acts already cited above equated Common Highway to a route that carried waggons. Therefore at this date a Road was vehicular.

“S XIIIand whereas in the Counties of Chester and Lancaster there are many and sundry great and deep Rivers, which cross and through the Common and Publick Highways and Roads within the said Counties.....”

²Quoted in “Packmen, Carriers and Packhorse Roads” D Hey Leicester University Press .

Another reference in the same Act, but this time with and rather than or between Highways and Roads.

1691 3 Will and Mary c 12; “An Act for the better repairing and amending the Highways and for settling the Rates of Carriage of Goods”.

“Whereas the free and easy intercourse and means of conveying and carrying Goods and Merchandizes from one Markett Towne to another contributes very much to the advancement of Trade.....For which end good and necessary Laws have been made heretofore for the enlarging repairing and amending of the Highwayes and Common Roads of the Kingdom, Notwithstanding which Laws the same are not sufficiently.....repaired but remain almost impassible....”

Note the appearance of the word ‘Road’ in conjunction with ‘Common’. The use of ‘and’ leaves some uncertainty whether Common Roads were considered the same as Highways or something different that needed to be separately specified. Throughout the body of the Act all references are to Highways only other than as given below. The commercial importance of the road system is clearly understood at this time.

XIV “And bee it enacted by the Authority aforesaid that the Surveyors of the Highwayes shall and are hereby required to make every Cart-way leading to any Markett-Towne eight foot wide att the least, and as neare as may be even and levell.”

XX “And bee it further enacted and declared by the authority aforesaid that noe Horse-Causey or Causey for Horses travelling upon or in any Publick Highway be less or under Three foot in breadth.”

These provisions of minimum widths for cartways and horse causeys recur in modified form in the Acts of the following century. Note that the word Cartway is not defined earlier but is clearly expected to be understood. It would seem logical to deduce that if a route to a market town is eight foot or more wide it is prima facie a cartway and therefore vehicular. The references to horse-causeys is specific to a particular arrangement whereby a narrow paved section was provided for horses, often raised above the level of the adjoining highway. The adjoining ‘publick highway’ would have been general purpose and it will be a question of fact whether the route was exclusively a horse causey or a general highway with a strip of horse causey alongside; a bit like a bus lane on a modern road. (This is not the same as a bridleway as now understood, although often modern bridleways may have originally been causeys). The fact that cartways and horse-causeys are being specified leads to the possibility that Highway is now being construed as including both these as sub-categories.

1696-7 8 &9 Will & Mary 16 Highways Act

This Act contains provisions for widening Highways by the power of five JPs in quarter Sessions to a width not exceeding eight yards. “Highway(s)” is the only word used in this Act

1697 Daniel Defoe's "Essay on Projects"³.

Defoe wrote this essay to draw attention to a number of social and economic problems including the highways. In the course of it Defoe uses 'highroad' and 'highway' interchangeably (page 57) and also uses 'roads' interchangeably with 'highways' (page 58) and relates 'roads' to the use of horses and carriages, and 'cross-roads' to the use of carriages. "The deepness and foulness of the roads is occasioned by the standing water, which.....softens it to such a degree that it cannot bear the weight of horses and carriages;..." Further on (page 60) "The cross-roads, which are generally narrow, are yet broad enough in most places for two carriages to pass; but on the other hand, we have on most of the highroads a great deal of waste land thrown in (as it were an overplus to the highway).....is indeed no benefit at all either to the traveller as a road or to the poor as a common....."

³ "An Essay upon Projects" (1697): D Defoe ed H Morley (Cassells National Library

18th Century.

1755 “Dictionary of the English Language” (Samuel Johnson)

- ‘ROAD: (1) A large way, path
(2) Grounds where ships may anchor
etc.’
- ‘WAY (1) The road in which one travels
(2) Broad road made for passengers
(3) A length of journey’
- ‘PATH (1) Way, road, track; in conversation it is used of a narrow way
to be passed on foot, but in solemn language means any passage.’
- ‘FOOTPATH A narrow way which will not admit horses or carriages.’
- ‘HIGHWAY Great road; publick path’
- ‘CART-WAY A way through which a carriage may conveniently travel.’
- ‘RIDER (1) One who is carried on a horse or in a vehicle’.
- ‘DRIFT (3) Any thing driven at random.
(4) Any thing driven or borne along in a body.’
- ‘HORSEWAY A broad way by which horses may travel.’

From the first half of the 18th Century onward there were an increasing number of Turnpike Acts. The examples examined use the word road to describe the routes that they wish to improve and on which they will subsequently level charges on vehicles and other traffic. Two examples of typical wording are as follows:-

1758 31 Geo 2 c 74 “An Act for Repairing and widening the Roads from the Town of Bishops Waltham in the County of Southampton, over the Top of the Down called Stevens Castle Down, and through Salt Lane and Tichborne to the Town of New Alresford;.....”

1772 12 Geo 3 c 104 “An Act for repairing and widening the Roads from Sheet Bridge to Portsmouth, and from Petersfield to the Alton Turnpike Road, near Ropley, in the County of Southampton”.

1766 7 Geo 3 c 42 “An Act to explain, amend and reduce into one Act of Parliament the several Statutes now in being for the Amendment and Preservation of the Publick Highways of the Kingdom....”

This Act has not been reviewed in detail as it was replaced by a further amending and consolidating Act in 1773. see below.

1773 13 Geo 3 c 78 Highways Act amending and consolidating previous legislation.

“XV And be it further enacted, That the said surveyors of the Highways shall.....cause to be made, supported and maintained every publick Cartway leading to any Market Town, Twenty Feet wide at the least, and every publick Horseway or Driftway, Eight Feet wide at the least, if the Ground between the Fences inclosing the same will admit thereof.”

This is a re-enactment (updated) of the provisions in the Act of 1691 for a Cartway of eight feet and a horse causey of three feet. Apart from the widths being increased (necessarily so one imagines to allow users to pass) Horse-Causey is now described as “Horseway or Driftway”. There is an obvious question whether the introduction of ‘Driftway’ is for the accommodation of herds of driven animals or just the contemporary usage for strings of packhorses; in other words are the ways the same as previously described but the terminology is updated for 1773? The most likely explanation is that it is an updating of the terminology, as a way eight feet wide would be very narrow indeed for a herd of driven animals, but quite sensible for a string of packhorses with room to pass another ridden or led horse. Consistent with this understanding it is recorded that a “drift” of packhorses was a common usage⁴. When this clause came to be re-enacted again as Clause LXXX of the Highways Act of 1835 (see below) the word Driftway was omitted.

“XIX That any publick Highway not in the situation herein before described, or Publick Bridleway or Footway may be diverted, so as to make the same more commodious to the Publick, and the Owner(s) of the Lands and Grounds through which such new Highway, Bridleway or Footway is proposed to be made.....it shall and may be lawful for any Person or Persons injured or aggrieved by any such Order or Proceeding, or by the Inclosure of any Road or Highway.....(may appeal to quarter Sessions).....and if no such appeal be made the said Inclosures may be made and the said Ways stopped.....; and the new Highway, Bridleway or Footway, so to be appropriated and set out, shall be, and for ever after continue a publick Highway, Bridleway or Footway to all Intents and Purposes whatsoever; but no Inclosures of such old Highways or Bridleway, or Stoppage of such Footway shall be made, until such new Highways, Bridleway or Footway shall be completed and put into good Condition and Repair, and so certified by Two Justices of the Peace upon view thereof;.....”

This clause equates Road and Highway where referring to old or existing ways, but firmly establishes the three classes of Highway, Bridleway and Footway for new ways. There is nothing in this Act which supercedes the earlier use of Road as equivalent to a general purpose highway. It is clear here that at this date the use of the word Highway indicated a route with full rights, as distinguished from a bridleway with lesser rights. This is in distinction from the 1835 Highways Act which defines a Highway as including all types of way (see below).

⁴See D Hey “*Packmen, Carriers and Packhorse Roads*” (1980) page 152 “There are a set of travelling merchants in Leeds, who go all over England with droves of packhorses,.....”; and J W Gregory “*The story of the Road*” (1931) page 206 “in the 18th century.....the main transport of goods was by ‘drifts’ of four to twenty pack-horses which travelled in single file under one carrier”; and also “*Packhorse, Waggon and Post*” J Crofts (Routledge) quoting the Derbyshire justices 1718 “...a horse bridge is urgently needed for the great gangs of London Carriers horses, as well as great drifts of Malt Horses and other daily carriers and passengers”.

“LIII And whereas in some places it hath been and may be found necessaryto secure Horse-Causeways and Foot Causeways by posts, blocks or Great Stones..... from being broken up and spoiled with Waggons, Wains, Carts and Carriages.....”

This Clause provides for the protection of the Causeys as traditionally formed from destruction as a result of increasing wheeled traffic. The term Horse-Causey used is that of the Act of 1691.

Also in 1773 an Act [13 Geo 3 c 84] was passed to standardise the arrangements being made for the increasing number of Turnpike roads. There are several reference in passing to roads and causeys. These include the following:-

“XIif the Owner of any Waggon, Cart or Carriage.....travelling on any Turnpike Road where any Toll Gate or Weighing Engine is....erected, shall drive or turn out of the same into any other Road, in order to avoid being weighed.....”

This is another example where the appropriate word when a vehicle is being described is Road.

“LXIII Whereas Parts of Highways or Turnpike Roads have been.....diverted....any particular Person(s) liable to repair the old Highways or Roads.....”

“Highways or Roads” used throughout this section.

1794

An example from the Preface to Paterson’s Road Book (“A New and Accurate Description of all the Direct and Principal Cross Roads in England and Wales” - 10th edition 1794)

“The Utility of an accurate description of the Roads is so obvious to every Person who travels as not to require any Demonstration;.....By the Plan adopted in executing this Work, it contains all the new Roads down to the present Time, with the alterations and improvements made in the old; and exhibits, at first View, the Distance of each City, Town or remarkable Village, from London, with a particular Account of the Roads leading to it, measured from the different Standards in London, according to the Milestones on each Road.....”.

This is followed on page x by a “Post Table” which shows the cost of a post chaise and pair, with and without saddle horses, and a post chaise and four likewise. This makes it quite clear that the context of this information about roads was for the use of vehicles, namely post chaises. In the detailed routes that follow it is made clear whether any particular route is unsuitable for a vehicle. Suitability is the test, not legality.

1800 Johnson's Dictionary definitions:-

ROAD A large way for travelling; path.

HIGHWAY A great road, a public path.

The 1810 (10th) edition was the same as the first (1755) edition (see 18th century above) in most respects, but the following had been added or changed:-

'HORSEWAY A way by which horses may travel' (*broad* dropped)

'CAUSEY }

CAUSEWAY} This word, by a false notion of its etymology, has lately been written causeway. A way raised and paved; a way raised above the rest of the ground'

'PRIME (*as in PRIMEWAY*) the best part'

The 19th Century.

At the start of the 19th Century, in 1801, a General Inclosure Act [41 Geo 3 c 109] was passed and this included provisions for the legal stopping up or diversion of public roads. These provisions had usually been included ad hoc in individual Inclosure Acts up to this time, and were introduced generally in the 1773 Highways Act s XVI et seq, but this Act standardised the arrangements. The relevant section included the following:-

“VIIIsuch Commissioner..shallset out and appoint the Public Carriage Roads and Highways, through such Lands and Grounds intended to beinclosed, and to divert, turn and stop up, any of the Roads and Tracts, upon and over all or any part of the said Lands and Grounds.....so as such Roads and Highways shall be, and remain Thirty Feet wide.....”

Having mentioned Public Carriage Roads and Highways at the start of the section the Act then considered it sufficient to refer to “roads and highways”, the “public carriage” being superfluous as the meaning is established. However as the section proceeds some references are to “roads” alone and some to “carriage roads”. When discussing the former routes the phrase is “old or accustomed Road” viz:-

“.....in case such Commissioner...shall by such Bill be empowered to stop up any old or accustomed Road, passing or leading through any part of the old Inclosures in such Parish....the same shall in no case be done without the concurrenceof Two Justices of the Peace, acting in and for such Division and not interested in the repair of such Roads...”

“IXsuch Carriage Roads so be set out as aforesaid, shall be well and sufficiently fenced.....Parish....wherein such Roads shall be respectively situate....and in like manner as the other Public Roads within such Parish....are by Law to be amended and kept in Repair.”

This section also moves freely between references to “Carriage Roads” and “Roads” and appears to equate the two, as also in the rubric at the side.

“Xsuch Commissioner...shall... be required to set out and appoint such private Roads, Bridleways, Footways, Ditches, Drains, Watercourses, Watering Places, Quarries, Bridges, Gates.....as they shall think requisite, giving such notice and subject to such Examination as to any private Roads or Paths as are above required in the case of public Roads; and the same shall beever thereafter.....kept in repair, by and at the expense of the Owners.....of the Lands and Grounds directed to be divided and Inclosed....”

“XIthat after such public and private Roads and Ways shall have been set out....the Grass and Herbage arising thereon shall for ever belong to and be the sole right of the Proprietors of the Lands and Grounds which shall next adjoin the said Roads and Ways on either side thereof, as far as the crown of the Road.....”

There is no reference to Driftway in the above comprehensive list of items. Roads are referred to in distinction from bridleways and footways, which is a further indication that road means vehicular, even in this context of private roads.

1809 Vancouver’s Hampshire.

This publication was a survey by an important government officer of the state of the economy of the county, and included consideration of the state of the roads and is quoted by William Marshall.⁵ It includes the following extract which sheds light on the understood meaning of ‘By road’ which is clearly vehicular from page 392 et seq in Vancouver.

“In by roads, already deeply rutted, such a regulation (*to standardise wheel track widths*) would be greatly advantageous; especially to gentlemen who travel with sober pace, over the Island at large, in their own carriages; no matter whether they move on four wheels or only two”

1835 5&6 Will 4 c 50 _____ Highways Act.

“S V Interpretation of Terms. In the construction of this Act-.....

And the word Highways shall be understood to mean all roads, bridges (not being county bridges), carriage-ways, cartways, horseways, bridleways, footways, causeways, churchways, and pavements;”

This definition section collects all the terms that have appeared in the various Acts mentioned above with the exception of Driftway, and designates them as covered by ‘Highway’. The reason for this is that this Act is very much aimed at the problems of responsibility for repair, and sees all the different types of Highway as having a common repair responsibility.

“S XXIII When new highways are to be kept in repair by Parishes.

⁵ “The Review and Abstract of the County Reports to the Board of Agriculture” Vol 5 William Marshall (David and Charles Reprints) page

No road or occupation way made or hereafter to be made at the expense of any individual or private person, body politic or corporate, nor any roads already set outas a private driftway or horsepath in any award of commissioners under an Inclosure Act, shall be deemed..... to be a Highway.....”.

This section is a rare example of Driftway being used in an Act, and as seen above the term is not defined, being used here solely in conjunction with the word Private to make it clear that it is not publicly repairable. In the context of this Act and the definition of repair responsibilities, it was important that all possible candidates for public repair liability be excluded.

“S LXXX And be it further enacted, that the said Surveyor shall and he is hereby required to make, support and maintain, or cause to be made, supported and maintained every public Cartway leading to any Market Town twenty Feet wide at the least, and every public Horseway eight Feet wide at the least, and to support and maintain every public footway by the side of any Carriageway or Cartway Three feet at the least, if the Ground between the fences including the same will admit thereof;

This brings forward the provisions of 13 Geo 3 c 78 section XV but drops the reference to Driftway associated with Horseway.

SLXXXI This section defines the width of any gate across a public Cartway as a minimum of ten feet, and across any public Horseway as five feet, both clear between the posts.

It seems clear from the above references that the working terminology where a distinction is required is between Cartway and Horseway, both being sub-categories of Highway, whereas prior to this Act Highway specifically meant a vehicular and general purpose route.

There are no references in this 1835 Act to identify Driftway as a class of public Highway to which any specific rights or restrictions apply.

1835 to 1929

There were a number of subsequent Acts dealing with various aspects of highways, including the 1870 Tramways Act which states

“s3 The term ‘road’ shall mean any carriageway being a public highway, and the carriageway of any bridge forming part of or leading to the same.” *(This definition is consistent with the 18th century definition already described).*

and

Telegraph Act 1863 sect 3

“The term ‘Public Road’ means a public highway for carriages repaired at the public expense.”

Public Health Act 1848 11 &12 Vict c 68

Urban areas Boards of Health declared to be surveyors of highways for urban areas. It was therefore not directly relevant to the subject of rural roads, but included this wide definition of street:- “The Word “Street” shall apply to and include any Highway (not being a Turnpike Road), and any Road, Public Bridge (not being a County Bridge), Lane, Footway, Square, Court, Alley, Passage, whether a thoroughfare or not,.....”

Locomotives Act 1861 24 & 25 Vict c 70

“An Act for regulating the Use of Locomotives on Turnpike and other Roads,.....”.

“Whereas the Use of Locomotives is likely to become common on Turnpike and other Roads;.....” *The phrase “turnpike and other roads” occurs a number of times until Section 8 which says “Every Locomotive propelled by steam or any other than Animal Power to be used on any Turnpike Road or Public Highway shall be constructed.....” Section 11 has a similar formula. Here it seems to be assumed that a Locomotive (a vehicle) may go on any Highway, although by this date, the 1835 Highways Act Section 5 had defined a Highway as including footpaths and bridleways.*

Highways Act 1862 25 & 26 vict c 61

This Act formed Highway Districts and used the word Highway nearly throughout, referring back to the Highway Act of 1835 as the “Principal Act”. It did however include the following Section (36) which gave the Inhabitants of a parish the power to adopt and repair private roads of various types in return for the use of them. “...any parish desirous of undertaking the Repair and Maintenance of any Driftway, or any private Carriage or Occupation Road, within the Parish, in return for the use thereof.....(may be declared)....the same to be a Public Carriage road to be repaired at the expense of the parish.” This is an interesting indication that a private driftway when adopted is considered to be equivalent to a public carriageway, there being no such thing as a public driftway.

Locomotives Act 1865 28&29 Vict c 83

An Act for further regulating the Use of Locomotives on Turnpike and other Roads for agricultural and other purposes.

The page headings of this Act were “Locomotives on Roads”. It introduced a requirement for road engines and traction engines to have three people controlling them one of whom had to precede the vehicle with a red flag. These measures were designed to ensure the safety of horse drawn vehicles. Section 5 again suggests that a Locomotive may be used on any public Highway. Section 6 however, (which deals with stationary engines within 25

yards of any Turnpike Road, Highway, Carriageway or Cartway is possibly implying that the two latter terms apply to private rather than public roads.

Public Health Act 1872 35 & 36 Vict c 79

Transferred the jurisdiction of the Home Office with regard to highways and turnpike roads to the Local Government Board. This led to the break up of Highway Boards and the transfer of their powers to RDCs, completed in 1894.

Highways and Locomotives Amendment Act 1878 41 & 42 Vict c 77

Its full title was “An Act to amend the law relating to Highways in England and Wales and the Acts relating to Locomotives on Roads”.

Red flag abolished, but attendant still had to walk in front of vehicle. Costs of highway maintenance spread over the Highway Districts. Main roads defined as “Disturnpiked Roads” and half the cost of maintenance to be paid by county. Provision was also made for “.....any Highway within the District (which) ought to become a Main Road by reason of being a medium of communication between great towns.....” could after inspection be declared a main road. Where the Act is talking generally it always uses the term Highway.

Local Government Act 1888 51 & 52 Vict c 41

County Councils established; attempt to tax vans and wheels. further references to Main Roads and the County councils responsibilities in respect of them.

Local Government Act 1894 56 & 57 Vict c 73

Abolished Highway Boards and Highway Parishes and transferred duty of maintaining and repairing highways in Rural areas, other than main roads, to 682 Rural District Councils. Section 13(2) defined the responsibilities for maintaining footpaths “not being footpaths at the side of a public road.....” In general the term highway continues to be used when discussing powers and duties in this Act. and this reflects a clear intention to cover all classes, including footpaths and bridleway.

By the 20th century there were major changes going on with the rapid development of motorised transport, and the attendant need to make long overdue improvements to the road network to keep pace with these developments. Thus was formed the Roads Improvement Association as early as 1886, initially from cycling clubs, and later with the addition of motoring organisations, and then in 1909 came the Road Board⁶. Both these bodies were concerned with the needs of vehicular transport, and “road” was considered the appropriate term to use .

Motor Car Act 1903 3 Edw 7 c36

⁶ “The Kings Highway” Rees Jefferey s

Introduced fees payable on registration of a motor car. Raised speed limit from 12 to 20 mph. This Act does not distinguish footpaths and bridleways, and anticipates motor cars being used on Highways. Arguably though the definition of footpaths and bridleways already in existence would restrict this use to “vehicular highways” only. This seems to reflect careless drafting that this sort of ambiguity was allowed.

Development and Road Improvement funds Act 1909 9 Edw 7 c 47

Designed to provide the country with a new system of highways suitable for motor traffic, whilst placing the cost on the motoring community. Quite clearly intended that “road” applied to vehicles.

Ministry of Transport Act 1919 9&10 Geo 5 c 50

Provided the Minister “may classify roads in such manner as he thinks fit”. There was a Director General of Roads

Roads Act 1920 10 &11 Geo 5 c 68

This Act provided for contributions towards the maintenance of existing roads out of the newly constituted Road Fund, which replaced the Road Improvement Fund. The former registration arrangements replaced with licencing and taxation arrangements for motors

Roads Improvement Act 1925 15&16 Geo 5 c 68

Prescription of building lines along roads.

However, the 1929 19&20 Geo 5 c 17 Local Government Act included. “s134 Definitions ‘Road’ means a Highway repairable by the inhabitants at large.....” and thus by this time, “Highway” is already encompassing all classes of public way per the 1835 Act above, Road is effectively replacing or equalling Highway, and is therefore no longer confined to describing a general purpose way but has been extended to include all classes.

Summary

Road and Highway.

For the purpose of interpreting early maps, plans, road books etc. it is important that the usage of the period when the document was made is the relevant basis for deciding the rights belonging to the way. From the above details it can be seen that the meaning of the words Highway and Road has changed significantly over time. In the 17th Century through to about the middle of the 18th century road and highway were equivalents, both meaning general

purpose ways for all manner of traffic. From the last quarter of the 18th century onward up to 1835, Highway still meant a general purpose route, but was distinguished from bridleway and footway which had restricted rights, and which appeared in Acts for the first time. Road had not changed, and continued as an equivalent of the former definition of Highway, either specifically such as “Highway or Road” or by implication.

From 1835 ‘highway’ could be applied to any type of way, including bridleways and footpaths, and therefore lost its special significance as a description of a vehicular route. ‘Road’ however was not redefined, and therefore as a result of its earlier definition in the 17th century when it was applied to general purpose vehicular routes it continued to indicate just that, and that meaning was implicit in the bodies formed to look after the interests of motorists and cyclists at the turn of the century. A number of Acts in this period make it clear that a road was a general purpose vehicular way.

However in the Local Government Act 1929, “road” was defined as a “highway repairable by the inhabitants at large” and lost its unique distinction as a word defining a general purpose way. This has effectively muddied the legal waters since, although in common parlance there is no doubt that ‘road’ still means a vehicular route to this day thus a reference to “Road” prior to 1929 can with confidence be said to imply a vehicular way, after 1929 that is not the case.

Driftway.

‘Driftway’ has never been a category of public Highway to which specific statutory provisions apply. In the second half of the 18th century it was used in conjunction with horseway to define minimum widths for horse paths, and this reference seems to have used the word in a particular context as applicable to drifts of packhorses. It disappeared for this purpose after the 1835 Act, which only used the word ‘driftway’ when specifying Inclosure created private roads that would not automatically become parish repairable.

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