

road. McPherson only grows grain for his own horses. On Mackenzie side, Levels Estate is the principal part that uses this road. Mr. Bennett, on Mackenzie side, uses one mile and a half from Cave. His wool comes on the road. Many more Waimate than Levels people or Mackenzie settlers use the road.

Cross-examined by Mr. Kinnerney.—There is very little traffic on this road. New Zealand and Australian Land Company used to cart a good deal at one time, but not now. The traffic is more than formerly. Was there four years ago at the New Zealand and Australian Company's bush. Levels Estate has 400 acres in oats in Mackenzie County about 30 to 35 bushels to acre, and this would come along the road. The Levels Estate is all but what Burnett owns in Mackenzie County on this road. They own some on Levels side. Levels Estate uses it a good deal for sheep. The outlet for the sheep is at the Cave. Levels sheep traffic is largely in excess of Waimate—as much in one month as Waimate would have in a year. The road has been better attended to the last two years than for twenty years before. A good deal of it was shingled the last two years, two miles done lately. Only uses a portion of the Cave-to-Cannington Road. The other Waimate people only use a portion of the road. Wool is generally carted in fair weather. The traffic wears it to a certain extent. The timber is carted at all times.

Re-examined by Mr. Raymond.—Wood traffic is pretty well a thing of the past. This part of Levels Estate would carry about four thousand sheep. The Levels property have four or five thousand that would use this road, and they take them backwards and forwards, and cause more traffic than ours do. They would take them for shearing, weaning, &c. They would take them four or five times a year, but only the outlying paddocks sheep would come all along the road. We only send our sheep away twice a year. Has lived there twenty-two years. Road is more used by all sorts and conditions of traffic by Waimate than Levels. Mackenzie sent an immense lot of grain down this year along this road. This came from Levels Estate in Mackenzie. Believes Waimate sends more traffic on the road, Levels more sheep. Heavy traffic is most injurious to the road. Sheep do not do much harm.

(This concluded the evidence for Levels.)

*Mr. Kinnerney, for Waimate, said,—*

I submitted two questions at the outset. I submitted that the Commission is invalid. I will not elaborate these points now. These are conditions precedent. The Commission gives power not authorised by the Act. The Commission should inquire into specific matters of fact.

I now submit that as to Cave-to-Cannington Road it should be excluded altogether. This is not a road giving access to Levels County. It is a boundary-road, and it is not situated within Levels County. Section 8 has no application to it, nor have sections 113 and 114, "Public Works Act, 1894." In any case the jurisdiction of sections 113 and 114 is for bridges. The question of how this road is to be governed is under section 250, "Counties Act, 1886." There is a complete and independent provision relating to it, and it is quite clear that Cannington Road cannot be dealt with under this Commission. Will prove in evidence that by the schedule to "Levels County Act, 1894," this road is a boundary of Levels County. Whether or not this road is in or out of the county, it is not a road in Levels County within the meaning of section 8 of the Act of 1900. I submit that Cannington Road is entirely outside the scope of this Commission.

As to the bridges: The Lower Pareora Bridge has already been dealt with by Governor's Proclamation under section 114, "Public Works Act, 1894." The Proclamation is in *Gazette* of 1896, page 1627. No grounds have been shown for varying or altering that Proclamation. The general rule is that a bridge across a river between two counties is divided equally, and this is the proper and correct rule to adopt.

As to the roads: Section 8 is limited to construction or maintenance, and it is not so wide as section 114. Section 114 is merely a machinery clause or for procedure, and it cannot enlarge section 8. They must show that the works are construction or maintenance. Submits that the work is construction. Mr. Black and Mr. Marchant show that they let the roads wear out and then really reconstruct, not maintain them. Mr. Marchant showed what required to be done in constructing, and submitted that remetalling with 25 yd. to chain is reconstructing, and in any case section 113, "Public Works Act, 1894," should have been complied with. Cannot say if his clients are prejudiced in steps not taken. I submit these provisions should have been complied with. I submit section 8 does not apply to cases of years of neglect. To do so would be to make the Act retrospective. The roads in some places are worn out. The Act is intended to apply to annual maintenance of works already done or to actual construction. I submit that if this claim is for reconstruction it is entirely outside the Commission. Levels County letter to Chief Engineer of Roads: The letter asks for a Commission *re* maintenance. The Commission includes it. Local body is bound by what it asks for.

Submits that section 8 does not apply to this case. It applies to a case where a road is a mere conduit-pipe, and there are no compensating advantages. Mr. Haselden said in Onslow Borough case, if road is a causeway the Act meets it. In the Hutt case the Borough of Onslow was impoverished, but in this case the roads are in a wealthy county. The Act only applies to a very special case, and not to moderate use of roads at all. The roads are not constructed for the local body in whose district they are situated, but for the general public. It was not intended to alter the whole road-system of the colony, but to deal with extraordinary cases where there are no compensating circumstances.

Another reason is that the contributing body has no voice in the expenditure of the money it is compelled to pay. Mr. Haselden lays down: 1. Large user. 2. Road must afford access. 3. Equitable that district should contribute. 4. Circumstances of situation of road to be considered. The question is, Has there been a large user of these roads by Waimate? There has