

and it was conclusively proved at the inquiry that this is so, and that practically the whole of their traffic, except what goes by railway, comes over the Levels Roads to Timaru, which they make the centre and to which on market-day they come in large numbers. It is affirmed by Levels County that if this proposed union could have been accomplished it would have been a complete answer to the present claim.

As regards the Cave-to-Cannington Road I do not think the claim can be sustained in its present form, for reasons given later on.

*Legal and Equitable Objections.*

It will be seen from the notes of evidence, &c., in the appendix hereto that counsel for Waimate maintained:—

- (1.) That the Commission was too wide, and that Your Excellency must first of all be satisfied that the claim of Levels County is equitable before the Commission could be issued.
- (2.) That notice must be given to persons interested to show cause before such equity can be decided.
- (3.) That the whole of Your Excellency's powers under the statute should not be delegated, as is alleged to be the case in the Commission.
- (4.) That the Commission must be limited to certain definite questions to enable Your Excellency to judge and decide the case.
- (5.) That the Commission is therefore invalid.

*As regards Objections (1) and (2).*—If this were acted upon it would mean two inquiries instead of one, which I do not think the statute contemplates, besides which it appears to me that the question of whether the claim is equitable or not depends generally upon a purview of the whole case, which cannot be obtained until the whole matter has been thoroughly investigated as in the present instance, and Your Excellency would not, therefore, be in a position to judge the equity of the case without such investigation and report. In any case, the practice adopted hitherto was adopted in this instance, and until it is set aside by competent Court of jurisdiction I think it should be acted upon.

*As regards Objections (3), (4), and (5).*—I do not see the force of this contention. The decision rests with Your Excellency, and is not delegated to me. All I am asked to do is to report for Your Excellency's information, and this I believe is within the intent and meaning of the statute. Even if it be not so, Your Excellency's prerogative would, I believe, enable Your Excellency to refer the questions in this case to a Royal Commission, and the instruments issued to me in this case being under the Seal of the Colony makes them partake of that nature. Consequently, I am of opinion that these objections should be overruled.

An equitable objection was raised in this case which did not come up in the former case. It is, that when the various counties interested in this and "the former case" agreed to constitute themselves a harbour district for the purpose of constructing the Harbour of Timaru the Levels County impliedly agreed that its roads would be free to all traffic from the outside counties of Timaru. I do not think this objection can stand. In the first place there was then no law to enable a contribution to be made, and there is no evidence that the question was ever raised; and, in the second place, the agreement was for one large definite object, and the parties no doubt had in view that in carrying out that object adjustments as to minor details might have to be made as time went on.

A great deal was made by counsel for Waimate as to the alleged extravagant estimates of metal required, in the opinion of the Overseer for the Levels County, to be put on the roads, and it was implied that as the Levels County had allowed the roads to get into such a bad condition as to require all this it was a work of reconstruction, and not maintenance, and it was not, therefore, equitable to now ask for assistance to do what should have been done from time to time in the past. The Waimate County brought Mr. Howarth, Engineer for Southland County, and Mr. Bremner, their own engineer, who both testified to the excessive nature of the proposals of the Overseer. On the other hand, the Levels County produced Mr. Marchant, of Timaru, and Mr. Black, late Overseer for Waimate, who both confirmed in every particular the necessity for the work proposed. The question is one of engineering practice. The roads are not in bad order, but they are weak in places. Some engineers advocate putting a large quantity of metal on a road at once and allowing it to wear through gradually, with little attention for years. This is the practice in Levels County. Others advocate constant vigilance and keeping the surface up to par by light and frequent dressings of metal or shingle. This is the practice in Waimate and Southland. I do not consider it to be any part of my duty to determine which of these practices is better. All Your Excellency can, I think, do is to apportion the cost of maintenance, and if the county charged can prove that the other county has done that which does not fairly come under the meaning of "maintenance" they cannot be compelled to pay.

Towards the conclusion of the case I succeeded in inducing the parties to agree as to the proportion of heavy traffic that comes yearly over the Main South Road and the Otupua Road. Exhibit No. 25 shows that about 1,340 tons comes to six firms in Timaru yearly from the portion of Levels County that uses these roads, and Exhibit No. 26 shows that similarly there came from Waimate 1,174 tons. This does not, however, include goods that come from farmers owning land in both Levels and Waimate Counties, and it does not include back loading, and as it only refers to six firms in Timaru it is not a complete statement of the heavy traffic; but it shows that the proportion of such traffic is probably about eleven twenty-fourths from Waimate and thirteen twenty-fourths from Levels. It was, however, argued, with some justice, I think, that as the Waimate people have to traverse the whole length of these roads, and as Levels people only use them from place to place to and from Timaru all along their length, the proportion of their use of