

I have carefully considered the matter and have come to the conclusion that it would be a useless waste of time and money to state a special case. My reasons are—

- (a.) I have only power to state a case where there is a *dispute on a point of law* (see section 10, Commissioners' Powers Act, 1908), and a mere assertion by defendants that I have no jurisdiction, without their giving evidence or argument to support such assertion, is not a dispute within the meaning of the statute.
- (b.) The only ground, so far as I can see, on which it could be successfully contended that I have no jurisdiction arises from the fact that the Mackenzie Government tendered its resignation on the 6th July, 1912, and the Warrant of my appointment is signed by Mr. Myers, Minister of Railways, on the 8th July, 1912. It might therefore be held that he had then vacated office and that the appointment was bad; but the facts are that the Governor did not accept the resignation of the Mackenzie Government until the 10th July (see *Gazette*, 11th July, 1912). The Mackenzie Government, according to law and precedent, retained office until their resignation was accepted, and my appointment, made two days before then, is therefore valid. Even if it were held to be invalid, the fact that you, as Minister of Railways, personally directed me to proceed with the inquiry is alone sufficient to give jurisdiction.

As regards the other points upon which it was suggested I should state a special case, these are all questions of instruction or procedure, and there is direct authority for assuming that the Supreme Court will not give a Commissioner any such instructions. In the special case *re* Waipawa, Waipukurau, and Dannevirke cases (New Zealand Law Reports, xxvii, page 863), stated by me, the statute was silent as to the principles upon which the Commissioner should act in making the apportionment. In that case it will be seen that the Court decided that it would not lay down any legal rule for the guidance of a Commissioner in making such an apportionment, and that the matter is in the entire discretion of the Commissioner, who must proceed according to the principles of natural justice.

A direction of the Court would no doubt be most helpful in this difficult case, but, for reasons given above, I conclude that the Court would be unable to give any other directions than was given in the Waipawa case—viz., that I must proceed according to the principles of natural justice, and it is on these principles that I have endeavoured to base my award.

With reference to the question as to whether in assessing the proportion payable by Onslow I should consider the value of the land gained by the Crown by the making of the road, this question refers mainly to an area of flat land at Kaiwarra taken for railway purposes, and for which Onslow will lose the rates it could have collected therefrom if it had not been taken. I am of opinion that this has nothing to do with the question of apportioning the cost of the road.

Counsel for Petone also urged that I should credit any district with any part of the road closed in its district and sold, but it appears to me that this is a matter for adjustment in arriving at the cost of the road to the various parties, with which I have nothing to do.

A point was raised during the inquiry by counsel for Wellington that I am bound by the decision of Mr. Haselden, S.M., and that as the parties ultimately adopted his apportionment and allowed it to be embodied in the Hutt Road Act, 1903, the case is governed by the principle *Stare decisis* and is virtually *res judicata*.

This contention will not stand investigation. I have carefully read Mr. Haselden's report, which, by the way, deals with only about a third of the road. He entirely absolved the Hutt County from liability, because at that time the Hutt County controlled nearly all the rest of the road and had to maintain it for the benefit of traffic from Wellington, Lower Hutt, and Petone. He took into consideration the fact that Onslow had by law to maintain the part of the road which was the subject of the inquiry, but none of these facts are true at the present time; and he limited his apportionment to four cities or boroughs only—Wellington, Petone, Lower Hutt, and Onslow. The present law requires that the cost shall be borne by ten local bodies, including the adjacent counties, so that Mr. Haselden's apportionment cannot be adopted. Even if it be held that I must be guided as regards Wellington and Petone by his report I find that the nature of the traffic has changed. In the tallies of traffic taken for the purposes of that inquiry no mention is made of motor-cars, which were then almost unknown. Now they are very numerous, especially from Wellington.

The population of Wellington as disclosed by Mr. Haselden's report was 43,638, and the capital value was £7,372,342. The figures are now 64,372 and £18,228,584 respectively, and most of the other districts except the Hutt County show similar disparity.