

The conditions now are therefore totally different from what they were when Mr. Haselden's report was made.

Mr. Haselden does not attempt to explain the basis on which he made his apportionment, neither does he argue the case to a definite conclusion. He gives a simple award, after considering the facts as they appeared to him at the time. He does not say what those facts were, and as I do not know, and with all respect to him, I cannot therefore be bound by his decision, but I have not departed therefrom in any case without full consideration.

CONSIDERATION OF THE CASE IN RESPECT TO EACH PARTY.

Wellington.

Wellington objects to contribute 43.55 per cent. of the cost, as disclosed by Result No. 1. It objects, among other things, to the assessment being made on the traffic valuation or rateable basis. Its counsel contends that the assessment cannot be determined by a numerical ratio. He also contends "that the Commissioner is in the position of a Judge without a jury, and must inform himself as to the law, and then act as a jury, and in so doing he must take note of every factor and weigh these matters accurately and clearly. He must pay full regard to previous decisions and carefully consider the basis of existing legislation." With much of this I am in full accord, and I will say at once that in my opinion the apportionment cannot be made on the basis of ratio traffic alone, but the law in a case like this evidently requires me to consider traffic as an important factor.

The general law on the subject is to be found in section 109 of the Public Works Act, 1908. This section, in its original form in the Public Works Amendment Act, 1900, was intended to meet the case of the Hutt Road, and Mr. Haselden's report is based upon it.

Section 109 of the Public Works Act, 1908, requires a local body to contribute if the road affords access to its district *and the road is largely used by or for the purpose of traffic* to or from such district. This section also applies the provisions of section 119 of the Act to the construction of a road. The last-mentioned section implies that a local body must contribute if the work is of advantage and benefit to the whole or a considerable portion of its inhabitants, and it is just and equitable that it should so contribute. This is the general law, and there are no other enactments that conflict with this. If, therefore, this apportionment were being made under the general law, I should be required to ascertain, first of all, the use of the road by traffic; secondly, I should be required to find out whether or not it gave access to the district to be charged; thirdly, whether the road benefited or was likely to be of advantage and benefit to a considerable portion of the district to be charged; and, lastly, whether it is just and equitable that the charge should be made.

The Hutt Railway and Road Improvement Act, 1903, and its amendments lays down no basis or form of procedure. It simply provides for the appointment of a Commissioner to make the apportionment. In so doing, it evidently assumes that the Commissioner will follow the principles of the general law. Even if the act of 1903 does not imply this, then the direction of the Supreme Court in the case already quoted of the Waipawa, Waipukurau, and Dannevirke Counties is in point. Under that decision the Commissioner must proceed according to the principles of natural justice, and it is difficult to see how the principles of natural justice can be better applied to this case, save and except in the manner set forth in the general law above referred to.

I shall therefore consider, first of all, the use made of the road for the purposes of traffic to and from Wellington; then I will consider the other equities.

The summary of the tally of traffic taken by the Railway Department (Result No. 1) shows that, counting each item of traffic separately, there were 26,505 items that affected the districts who are required to contribute, and the proportionate use on this basis is stated in Result No. 1 already given. Some of the parties, however, contended that a proportion based on these lines was unfair, inasmuch as it does not discriminate between heavy and light traffic, and that a bicycle or a sheep counts thereunder as much as a wagon or a motor-car, and that, as the road was built for heavy traffic, that sort of traffic should be a much greater debit to the district from which it comes, or to which it goes, than does a bicycle or any other light traffic. I have therefore, for the sake of comparison, reduced the whole traffic to the equivalent of "heavy traffic." In doing so, I have followed the figures supplied to the parties at the inquiry, and I have also reduced such traffic to an equivalent use of the whole road, where such traffic used only part of the road.