this into consideration, I think we have made out our case, and that the other side have not made out their case, and as Levels has failed the cost of the inquiry should be adjudicated against them.

Mr. Raymond, for Levels :—

I will take the Waimate points in order :—

1. That the Governor should first be satisfied that there is a case, and that the case is equitable, before the Commission should issue. (*a.*) It is a remarkable circumstance, but that point has escaped the attention of all counsel and of every Commission that has come before. Query : How can the Governor satisfy himself as to the equity? (1) Only by inquiry himself; (2) only by delegating that duty to a Commissioner : and to undertake either of those courses would be absurd, as it would duplicate cost and the inquiries. It is admitted that such procedure is provided for. I submit that the Government had a duty to relegate to this Commission—the power to make all the inquiry. (*b.*) Section 8 of the Act of 1900 is divided into two parts. The first part is that if "he thinks fit." This gives the right in certain cases to have an apportionment, an award, and a contribution. The second part says "and for that purpose." There is a procedure to ascertain the right previously given by section 8. The procedure in this case is section 114 of the Act of 1894. The latter part of section 8 refers to the whole of the rights, and the Governor has the power to submit to the Commission all the facts necessary to ascertain whether the rights exist. These facts are (1) large use, (2) access, (3) equity, (4) apportionment. All these facts are properly relegated to the Commission. (*c.*) It is too late now, after the Governor has issued the Commission, to raise this question, for the Commissioner will take the position that the Governor has satisfied himself. It is improper for the Commissioner to inquire into the Governor's grounds for issuing a Commission.

2. That specific matter should be relegated to the Commissioner. This point has not been taken before. The answer is in the latter part of section 8, and the Commission includes the ascertainment of all circumstances. Subsection (7) of section 140 is in the widest terms, and I submit that the Governor asks the Commissioner to inquire into the aggregate of matters mentioned by section 8. It is admitted by the other side that the Governor could individualise these questions. The terms of the Commission include the sum of the matters which the Governor can appoint a Commissioner to report upon, and I ask, Why should the Governor not use the terms which he has used instead of individualising the instances which comprise the sum in these terms? Further, it is contended that the Governor has delegated to the Commission what he should not delegate. The Governor's function is the ultimate determination, and he has not delegated the determination, but reserves that right, and simply asks for a report and a recommendation.

3. The work proposed is "construction" or "reconstruction. (*a.*) The terms of the Commission require the Commission to inquire into maintenance. Levels County ask for a contribution for maintenance, and the Commission is so worded, whatever the Commissioner's opinion may be as to the evidence of traffic, to enable the Commissioner to report as to the traffic. (*b.*) The Overseer's report is not a statement of claim, as in an action. To show that this is not so, the Governor cannot order the payment of any specific sum of money. I submit that the other side treats the Overseer's report, which was sent to Waimate long before the Commissioner was appointed, as a claim. The letter to the Chairman of the Waimate County, dated the 15th June, 1901, forwards resolution and the estimates of the Overseer's report. They attempt to fix us to these figures. The Commission is not limited to the proportion claimed by Levels in those series of resolutions. It is immaterial whether Mr. Black has overstated or understated the work to be done. The same question arose in the Hutt case, and the Magistrate refused to deal with it. It is not an inquiry into the cost of construction or maintenance. The existence of the roads is admitted, and the scope of inquiry is limited to access and the equitable view. If the Governor makes an award for maintenance, and if our Council afterwards does construction-works, the money so expended by Levels County could not be recovered under the award. I also submit that, if the report and so-called claim are part and parcel of the claim, the proposal of the Overseer is maintenance. The quantity of metal which the Overseer proposes to put on the road determines this point. Mr. Bremner does not say it is construction (see his evidence). It is a question of maintenance as against over-maintenance. Mr. Hamilton's contention is that Levels asks for repairs, and that we differentiate between repairs and maintenance. Section 8 of the Act is designed to cover the whole question of the construction and maintenance of a road. It is idle to suggest that a local authority should be made liable for the whole cost of construction and not liable to repairs. We have to look at the intention of the Act. The Act relates to the whole future of a road, and only under very exceptional circumstances would it be that repairs are not included under maintenance. Mr. Hamilton quoted a dictionary meaning of "maintenance." Thus, "keeping in condition" might mean keeping in bad condition. Section 8, in dealing with road-maintenance, deals with it in a special meaning in relation to roads. Mr. Marchant gives the cost of the annual maintenance, and says that Mr. Black proposes that the cost should be spread over a considerable number of years. If the Levels County spend an excessive amount in maintenance, the Waimate County could then refuse to pay on the award.

4. As to want of notice, it was practically admited that this is a maintenance question. Notice is not necessary in such a case under section 114. It was not contended that the other side were prejudiced, but they would not admit they were prejudiced. Even if notice was necessary the provisions of section 113 are directory, and the issue of the Commission cures any want of compliance.

5. As to section 8 only applying when a road is like a conduit-pipe : But Mr. Haselden's remarks were applicable to special circumstances—namely of the case he was investigating. He was referring to Petone, and was not suggesting any arbitrary rules for all cases. If the Levels Road were a causeway we should have asked for a higher contribution. We must consider the