

LOWER HUTT CITY CORPORATION V. HAIN.

1946, June 11, 12, July 8. Court of Appeal, Wellington.
Sir Michael Myers C.J., Blair, Johnston, Fair, Cornish JJ.

Rating—Change of system from rating on unimproved value to rating on annual value—Notice of result of poll—Substitute Returning Officer signing instead of Mayor—Validity—Resolution determining system of rating to be in force in future—Validity—"In force"—Valuation roll—Preparation prior to year in which to be used—Whether validly available to local authority—Rating Act 1925, ss. 4, 7, 8, 44, 45.

In 1921 the system of rating in force in the Lower Hutt Borough was duly changed from rating on the capital value system to rating on the unimproved value. Pursuant to a poll duly taken on September 8, 1945, that system was on September 19 declared, not by the Mayor as required by s. 42 of the Rating Act 1925, but by the substitute Returning Officer, to have been rescinded, and on October 8, 1945, the Council of the Lower Hutt City in purported exercise of its powers under s. 4 of the Act by resolution determined that the system of rating on the annual value should in future be in force. A valuer was appointed by the Council on November 16 pursuant to s. 8 of the said Act who duly prepared and signed a valuation list in the prescribed form and transmitted it to the Council before January 15, 1946. Thereafter all matters necessary to enable a rate to be made and levied on the annual value were done and

all necessary steps were taken to comply with the provisions of the Act. Upon questions arising for determination on an originating summons removed into the Court of Appeal,

Held—by the Court of Appeal—per Myers C.J., Johnston, Fair, Cornish J.J. (Blair J. dissenting)—That the words “other than a district wherein the system of rating on the unimproved value is in force” in brackets in s. 4 (1) of the Rating Act 1925 were not intended to withhold from a Local Authority of a district in which rating was for the time being on the unimproved value, power to decide whether the system of rating to be in force in the district in future should be on the annual value or on the capital value; that the Council in the particular circumstances had disregarded no limitation imposed upon it by s. 4 (1) of the Act and that the resolution of October 8, 1945, was authorised by law and validly determined that the new system of rating on the annual value was in future to be in force from April 1, 1946, provided that the previous proposal for the adoption of rating on the unimproved value had been validly rescinded.

Held—by the Court of Appeal—That notwithstanding the gazetted notice of the result of the poll published on September 19, 1945, pursuant to s. 44 of the Rating Act 1925, was signed not by the Chairman or Mayor as thereby required but by the substitute Returning Officer, the said notice having been published by the direction of the Chairman and having contained the information required by the statute was in substantial compliance therewith and satisfied its requirements. *Leonard v. Salmon* (1922, G.L.R. 375; 1922, N.Z.L.R. 1068) and *Montreal Rail Co. v. Normandin* (1917, A.C. 170) applied.

That the preparation of a valuation roll prior to the rating year in which it was to be used was authorised by the Rating Act 1925 and that the valuation list in question which had been prepared and transmitted to the Council before January 15, 1946, in purported pursuance of sections 7 and 8 of the Act was validly available to the Council for the carrying into effect of its resolution.

Sim K.C. and *Gillespie* for plaintiff.

Cousins for defendant.

Sim K.C. for plaintiff:

The question shortly put is whether the plaintiff Corporation has effectively put everything in train to rate on the annual value as from April 1, 1946. See Rating Act 1925. It is submitted: (1) On the true construction of s. 45 the system of rating on the annual value is authorised. The words “in force” in the statute have a dual meaning and can mean in force for present rating purposes or in force for future rating purposes. In s. 4 (1) “in force” is used in the latter sense and in s. 4 (2) in the former sense. When a district has effectively carried a rescinding poll it has conformed to the requirements of s. 4 (2), and the qualification in brackets has no further application: so that, on September 9, 1945, the day after the carrying of the rescinding poll, the city came within the words “any district”, as defined in s. 2, without any qualification. The change from rating on the unimproved value to rating on the annual value had been carried out in accordance with the requirements of s. 4 (2). The true meaning of s. 4 (1) is gathered from a consideration of the sections which were amalgamated in 1908, namely the Rating Act 1894, s. 4, and the provisions of the Rating on Unimproved Value Act 1896. The words in brackets in s. 4 (1) are introduced merely to preserve harmony with subs. (2) and could have been better expressed by words at the beginning, viz. “Subject to the provisions of subs. (2) hereof”. After the date of the poll the system of rating on the unimproved value had a residuary operation for present rating purposes, but the annual

rating system was in force for future rating purposes. Neither s. 45 nor any other part of the Act says explicitly what system is in force between the date of the poll and March 31. The words “in force” are used in other parts of the Act as meaning coming into force in the future: see also s. 4 (4). In s. 7 the words “in force” must be given the meaning of “in force in the future”, or “coming into force”. As to the use of words in different senses in a statute, see *Souter v. Mosgiel Borough* (16 G.L.R. 74, 75; 32 N.Z.L.R. 1267, 1276); *Maxwell on Interpretation of Statutes* (8th edn. 276, 277, 278); *Halsbury's Laws of England* (2nd edn., Vol. 31, p. 482, para. 599). Section 45 refers back to s. 4 (1) and (2) with the construction contended for. (2) Question (2) is subsidiary, and the answer will depend on the answer to question (1). (3) The notice given on September 10, 1945, was a valid notice under s. 44 (2) of the Rating Act 1925. The words “shall publish” mean “shall cause to be published”—see s. 42, which is incorporated in s. 44. The notice itself by reference to s. 42 indicates that it was published by direction of the Chairman, and see the Chairman's affidavit on the facts. As to what is meant by “caused”, see *Stiles v. Galinski* (1904, 1 K.B. at p. 622). If the notice is in substance a declaration of material from which it is clear that a poll has been carried that is sufficient. *Leonard and Others v. Salmon and Another* (1922, G.L.R. 375; 1922, N.Z.L.R. 1068); *London C.C. v. Hobbs* (175 L.T. 687); *Bowstead on Agency* (10th 6). The declaration, having regard to what it is in substance, coupled with the word “cause”, involved the Chairman in the performance of a merely ministerial act.

Gillespie in support:

As to the commencing date of the rating year: section 51 (a) indicates the system of collecting rates. Section 52 refers to Form 7 in the Schedule, and s. 61 to Form 8, the second column of which indicates the period for which the rate is payable. The usual period is from April 1 to the following March 31. See also Municipal Corporations Act 1933, ss. 71 and 77, and definition of “financial year” in s. 2 of the Acts Interpretation Act 1924; also Urban Farm Lands Rating Act 1932, ss. 17 and 18.

Cousins for defendant:

As to question (1): If one takes the words in s. 4 (1) alone, ignoring everything else in the Act, the plain and natural meaning of those words is a district wherein the system of making and levying rates on the unimproved value is in force. That meaning is borne out by the words “in force” in other parts of the Act: see s. 4 (4). If a rate were levied in the intervening period it would have to comply with s. 51 (d). To give effect to the plaintiff's contention the words “in force” must be given different meanings, and this should not be done. It should not be assumed that the Legislature intended that a local body should be able to change directly from rating on the unimproved value to rating on the annual value. *Commissioners for Special Purposes of Income Tax v. Pemsell* (1891, A.C. 531, 549). The words “in future” in s. 4 (1) postulate the ability of the local authority to make and levy rates immediately under the new system. But

s. 45 prevents the plaintiff from so doing until March 31. Section 45 requires the plaintiff to rate after March 31 on the annual value. Therefore the plaintiff cannot pass a resolution under s. 4 (2) until after March 31. The decision in *McLaughlin v. Marlborough County Council* (1930, G.L.R. 374; 1930, N.Z.L.R. 746) has no bearing on this case. This is a case not covered by the legislation: there is a *casus omissus*. *Halsbury's Laws of England* (2nd edn., Vol. 31, pp. 497 and 498); *Richards v. McBride* (8 Q.B.D. 119, 124); *Rex v. Dyott* (9 Q.B.D. 47). As to the contention that a district, having carried out a rescinding poll, has complied with the requirements of s. 4 (2) and that the qualification in brackets has no further application, s. 45 makes it clear that the change is not to be operative until March 31 following. Having regard to s. 3 it is impossible that more than one system of rating should be in force at one and the same time. As to question (2): However question (1) be answered, question (2) should be answered in the negative. Section 8 (4) of the Rating Act 1925 provides for the making of the roll by the valuers. "Rateable value" is defined by s. 2. Section 24 provides for an Assessment Court; and s. 28 (1) that the Judge shall fix the place of sittings. The notice of valuation states where the Court is to sit: see Forms 3 and 4 in the First and Second Schedules. None of these sections apply unless the system of rating on the annual value is then in force. As to question (3): To comply with the provisions of s. 44 (2) the notice must contain a declaration by the Chairman. It is the duty of the Chairman to declare the result of the poll, and it is a duty which cannot be delegated. The Returning Officer is concerned only with the actual voting at the poll. Duties involving discretion are imposed on the Mayor, and on the Mayor alone: see sections 40, 42, and 45. There is nothing to shew that it was the Mayor who made or authorized the declaration. It purports to be made by the Returning Officer. *Leonard v. Salmon* (*supra*) is of no assistance. The judgment there dealt with the requirement of a declaration by the Returning Officer, and he had quite properly made the declaration.

[MYERS C.J. refers to *Leonard v. Salmon* (at p. 377) as to the distinction between "publish" and "cause to be published".]

In s. 44 (2) the use of the word "publish" indicates that the power of delegation is taken away.

Sim in reply:

The words in s. 44 (2) incorporate the words "in like manner", which in turn incorporate s. 42. The defendant is unable to give any satisfactory reason why the legislation should have decreed as contended for, and if one construction leads to a *casus omissus* and another does not, the latter, in case of ambiguity, will be adopted. The construction submitted by the plaintiff harmonizes ss. 4, 7, and 45, and in addition produces a reasonable result.

Cur. adv. vult.

MYERS C. J.—The validity or otherwise of what the local authority has done depends upon some three or four sections of the Rating Act 1925. By s. 4 (1) of that Act it is enacted that:

"The local authority of any district (other than a district wherein the system of rating on the unimproved value is in force) may at any time by resolution determine whether the system of rating on the annual value or the capital value shall in future be in force in the district, and any such resolution may from time to time be rescinded and a new resolution passed."

On the 1st April, 1945, the commencement of the 1945-46 rating year, the City of Lower Hutt, being a district in which the system of rating on the unimproved value was in force, was *prima facie* excluded from the operation of that provision.

The provision that did apply to the case is subsection 2 of s. 4 which enacts that:

"For the purpose of adopting in a district the system of rating on the unimproved value, or of discontinuing that system in a district where for the time being it is in force, the provisions of sections thirty-nine to forty-seven hereof shall apply."

In accordance with the provisions of those sections the requisite proportion of the ratepayers demanded that a proposal to rescind the system of rating on the basis of the unimproved value be submitted to the vote of the ratepayers. This was done, with the result that there were fifteen hundred and sixty votes cast for the proposal, two hundred and eighty-four against the proposal, and there were also twenty-six informal votes. Section 44 (2) requires that the Chairman (that is to say the Mayor of the City) shall publish the result of the poll within the time and in the manner prescribed in the case of an adopting proposal, such prescription being contained in s. 42. The question whether or not the notice which was published is a valid notice is one of the questions that the Court is asked to answer. I shall consider it later.

Section 45 of the Act enacts that:

"If such rescinding proposal is carried in any district, then, from and after the thirty-first day of March succeeding the date of the gazetting of the Chairman's notice of the result of the poll, rates shall cease to be made and levied on the unimproved value, and shall be made and levied in the manner in which they were made and levied before the adopting proposal was carried."

(Prior to the adoption in Lower Hutt, before the district became a city, of the system of rating on the unimproved value, the system in force was that of rating on the capital value.)

After the gazetting of what the local authority relies upon as the notice publishing the result of the poll for discontinuing the system, the local authority proceeded to pass a resolution in purported pursuance of s. 4 (1) determining that in future the system of rating applicable to the city should be rating on the annual value. The question is whether that resolution is valid and whether the system of rating in the Lower Hutt City is accordingly rating on annual value as from the 1st April, 1946. At first sight it would appear that, by virtue of s. 45, upon rates ceasing to be made and levied on the unimproved value after the 31st March, 1946, they were to be made and levied on the capital value rating system, that being the system which was in force before the adoption of the system of rating on the unimproved value. I have no doubt that that would be the position if nothing more were done, but I think that as soon as the system of rating on the

unimproved value is validly rescinded, s. 4 (1) may be read as if the bracketed words "other than a district wherein the system of rating on the unimproved value is in force" are omitted, so that the subsection then reads, "The local authority of any district may at any time by resolution determine whether the system of rating on the annual value or the capital value shall in future be in force in the district." The resolution may be made "at any time" and of course is to operate in future. I assume that, speaking generally, a resolution under s. 4 (1) would be passed to take effect at the following 1st day of April, that is to say as from the commencement of the ensuing rating year. But that is not necessarily so: I assume that a resolution could be passed early in a rating year before the rates for that year were struck, and the rates for that year would then be made and levied in accordance with the resolution. But that cannot be done in a district where rating on the unimproved value is in force: in such a district, even though a rescinding proposal might be adopted early in the rating year before the rates were struck, the statute requires that for that year the rates must still be made and levied on the unimproved value. When a rescinding proposal has been carried—or rather when the requisite notice to that effect has been given—the force of the system of rating on the unimproved value is for all practical purposes spent, though it is true that no rates may be made and levied under any other system until after the expiration of the then current rating year viz. the 31st March. The effect is of course that no resolution by the local authority adopting either the capital value or the annual value system can become operative before the 1st April. I think that the expression "is in force" in the bracketed words in s. 4 (1) means until the discontinuance of the rating on the unimproved value has been validly carried and notice thereof published as the statute requires. I think, therefore, that the words in s. 45 "shall be made and levied in the manner in which they were made and levied before the adopting proposal was carried", must be read subject to the power of the local authority under s. 4 (1), with the bracketed words omitted, to determine by resolution whether the system of rating is in future (that is to say in the circumstances of this case as from the beginning of the next rating year) to be on the annual value or the capital value. On that view it follows that the resolution of the local authority now in question is authorised by law provided that the previous proposal for the adoption of rating on the unimproved value system was validly rescinded.

The ballot-paper did not strictly comply with the statute. The proposal was described in the ballot-paper as a "Proposal that the adoption of the system of rating property on the basis of the unimproved value thereof be rescinded in the City of Lower Hutt". That is what was contemplated by the provisions of s. 44 of the Rating Act, but that section is affected by s. 72 of the Statutes Amendment Act 1941 by subsection (3) of which the proposal should have been described as "A proposal

to abandon the system of rating on the unimproved value". However I think that the description in the ballot-paper complied substantially though not strictly with the statutory provision and that the divergence cannot be regarded as material. The real point on this branch of the case is whether s. 44 (2) of the Act was complied with. That is the provision which requires that the Chairman shall publish the result of the ballot within the time and in the manner prescribed in the case of an adopting proposal. If that provision was not complied with, it would appear that, notwithstanding the result of the poll, the making and levying of rates on the unimproved value would have to continue because, under s. 45, rating on that system ceases from and after the 31st day of March succeeding the date of the gazetting of the chairman's notice of the result of the poll. Consequently rating on the unimproved value would not cease if the provision of s. 44 (2) were not complied with, but the system would continue until validly determined. In point of fact nothing was published under the hand of the Mayor. What was published was a notice signed by Mr. T. G. Richardson, the substitute returning officer. Whatever may be said of this notice, it certainly was not strictly in order. It commences "Pursuant to the provisions of s. 42 of the Rating Act 1925". It should have been expressed as given pursuant to s. 44 (2), not 42, though s. 44 (2), it is true, incorporates by reference s. 42. Then the notice says "I hereby declare the above poll to have been carried." The declaration should have been made by the "Chairman" for the purposes of s. 44 (2). But, as I have said s. 44 (2) incorporates by reference the provisions of s. 42 which deals with the publication of the result of a ballot for the adoption of the system of rating on the unimproved value, and it says,

"Within twenty-one days after the result of the poll has been ascertained the Chairman of the local authority shall cause a notice of the number of votes recorded for and against the proposal, as hereinbefore provided, to be published in the Gazette, and also in one or more newspapers circulating in the district; and in such notice he shall declare the proposal to be carried or rejected, as the case may be."

It is curious that s. 42 should use the words "the Chairman of the local authority shall cause to be published" while s. 44 uses the words "The Chairman shall publish", but it is difficult to see why in the one case a notice should be published by the chairman himself, while in the other it is sufficient if a notice is given by someone else by the chairman's direction. In the present case the substitute returning officer deposes that he published the notice by the direction of the chairman, though why the notice should not have said so, or why for that matter it should not have been under the hand of the chairman himself it is difficult to understand. But it must be said that s. 44 does not seem necessarily to require that the notice shall be signed by the chairman. It does require, by reference to s. 42, publication (a) of the result of the poll, that is to say the number of votes recorded for and against; (b) within 21 days; and (c) in the "Gazette" and in one or more newspapers circulating in the district.

That is what is meant I think by the words "within the time and in the manner etc." in s. 44 (2). Those requisites were complied with. Every blunder has been made by the local authority and its officers that could be made, but, reading ss. 42 and 44 (2) together, and seeing that the notice is shown to have been published by the direction of the chairman and that it contains the information which the statute requires to be given, I think, though not without some hesitation, that there has been substantial compliance with the statutory requirements and that the blunders are therefore not fatal.

If the resolution determining that the system of rating on the annual value shall be in force in the district as from the 1st April, 1946 is valid, as I have said I consider it is, it follows I think that s. 7 of the Act must be read so as to be consistent with that result, and that accordingly the valuation list prepared and transmitted to the City Council on or before the 15th January, 1946 in accordance with ss. 7 and 8 is validly available for the carrying into effect of the resolution.

I think that each of the three questions asked by the Originating Summons should be answered in the affirmative.

It was necessary for the Plaintiff Corporation in its own interest to take these proceedings and it must pay the Defendant's costs.

BLAIR J.—This is an originating summons under the Declaratory Judgments Act 1908, for an order determining the following questions:

1. Whether the Council of the plaintiff corporation, a poll having been conducted pursuant to section 44 of the Rating Act 1925, rescinding the previous proposal adopting rating on the unimproved value, such poll being conducted and duly declared in the month of September, 1945, could by resolution of the said Council passed in the month of October, 1945, pursuant to section 4 of the Rating Act 1925, validly determine that the system of rating on the annual value shall be in force in the district as from the 1st day of April, 1946.
2. Whether in such circumstances a valuation roll [*sic*] prepared and transmitted to the said Council on or before the 15th day of January, 1946, in accordance with sections 7 and 8 of the Rating Act 1925, is validly available to the said plaintiff council for the carrying into effect of the resolution referred to in Question 1 above.
3. Whether the requirements of section 44 (2) of the Rating Act 1925, are satisfied if the Chairman of the said Council causes the result of the poll to be published in the manner as is provided by section 42 of the said Act in the case of the poll therein referred to or whether the said section requires a notice over the signature of the Chairman himself.

It was stated during the argument that it was desired that this third question be answered to whatever extent the Court considered proper.

In and prior to the year 1921 the Hutt City Corporation, which was then a borough under the

Municipal Corporations Act, made and levied its rates under the capital value system, but in that year it took all necessary steps to alter its rating system to that of the unimproved value. Owing to increase in population, the borough subsequently became a city under the Municipal Corporations Act, but this change has no effect whatsoever upon the questions to be decided in this originating summons.

On or about the 13th August, 1945, a petition was delivered to the Mayor of Lower Hutt City in pursuance of s. 40 of the Rating Act 1925, signed by not less than 15% of the ratepayers on the roll, demanding that a proposal to rescind the system of rating on the basis of unimproved value be submitted to the vote of ratepayers. In pursuance of s. 40 (2) of that Act, the Mayor fixed the 8th September, 1945, as the date upon which a poll of the ratepayers should be taken upon the said proposal. The form of voting paper setting out the proposal to be voted upon was:

"Proposal that the adoption of the system of rating property on the basis of the unimproved value thereof be rescinded in the City of Lower Hutt."

Incidentally, it may be mentioned that during the argument some reference was made as to whether "rescinded" or "discontinued" was the correct word that should have been used, but admittedly nothing turns upon that in this case.

The poll was duly taken on the 8th September, 1945, and resulted as follows:

For the proposal	-	-	-	1,560
Against the proposal	-	-	-	284
Informal	-	-	-	26
Total votes recorded	-	-	-	1,870

The Returning Officer and Town Clerk of the Hutt City was one Bertram Sinclair Knox, but owing to the indisposition of Mr. Knox, one Thomas Guy Richardson became the substitute Returning Officer of the plaintiff Corporation in respect of this poll. In an affidavit made by him he says:

"... upon the instructions and by the direction of the Mayor I caused to be inserted in the 'New Zealand Gazette' and in a newspaper circulating in the district on the 13th day of September, 1945, a notice of the result of the poll and a Declaration that it had been carried..."

It is suggested for the defendant that that notice and declaration was not validly made. It reads as follows.

"Lower Hutt City Council
Result of Poll

Pursuant to the provisions of Section 42 of the Rating Act 1925, I hereby give notice that a poll on the proposal that the adoption of the system of rating property on the basis of the unimproved value thereof be rescinded in the City of Lower Hutt, taken on the 8th day of September, 1945, the voting was as follows:

For the proposal	-	-	-	1560
Against the proposal	-	-	-	284
Informal	-	-	-	26

and, as there were 1276 votes more in favour of the proposal than against same, I hereby declare the above poll to have been carried.

Dated at Lower Hutt, this 10th day of September, 1945.

T. G. Richardson
Sub. Returning Officer."

It is claimed on behalf of the defendant that the poll is invalid because the result was not published in the manner prescribed by s. 42 of the Rating Act, and that the time within which that result could validly be published has expired. Section 42 reads:

"Within twenty-one days after the result of the poll has been ascertained the Chairman of the local authority shall cause a notice of the number of votes recorded for and against the proposal, as hereinbefore provided, to be published in the Gazette, and also in one or more newspapers circulating in the district; and in such notice he shall declare the proposal to be carried or rejected, as the case may be."

It is objected that the notice and declaration purporting to have been given was not signed by the Chairman of the local authority, but was signed by Mr. Richardson, the substitute Returning Officer of the plaintiff Corporation. It is submitted that the Chairman has no power of delegation, and that even if he had the power, the notice is not framed in such a way as to indicate that it was published under delegated authority from the Chairman. Although there was irregularity in my view such is not fatal.

By s. 2 of the Rating Act the word "Chairman" means (*inter alia*) the Mayor of a Borough, and he it was who should have complied with the requisites set out in s. 42. The affidavit made by Mr. Richardson, already quoted, states that the publication of the result was "upon the instructions and by direction of the Mayor", but the difficulty in the case is that nowhere in Mr. Richardson's notice is that fact in anywise stated. It is further submitted that as Mr. Richardson's notice commences by stating that he is acting "pursuant to the provisions of section 42", such is a sufficient indication to anyone that the notice has been "caused to be inserted" by the Mayor. Even if it be permissible for the Mayor to direct the Town Clerk or the substitute Returning Officer to supervise the publishing of the notice, the declaration of the result of the poll must be made by the Mayor himself. In Mr. Richardson's notice he takes it upon himself to declare the poll to have been carried. Various important results take place in consequence of the Mayor's declaration.

In *Leonard v. Salmon* (1922, G.L.R. 375; 1922, N.Z.L.R. 1068), the question arose as to whether the result of a poll authorising the raising of a special loan under the Local Bodies Loans Act 1913, had been properly published, and a petition for an enquiry into the taking of the poll was filed. The point in that case was as to whether a petition against the poll had been filed within the prescribed time, which time was calculated from the declaration of the result of the poll, and it was held that time ran from the public notification by the Returning Officer of the number of votes given for and against the proposal. By s. 12 of the Local Bodies Loans Act 1913, it was provided that the Chairman shall send to the Minister a notice of the number of votes recorded for and against a proposal, and in such notice shall declare the proposal to be carried or rejected. That notice was given by the Chairman by giving the respective numbers of the votes for and against the proposal, but he did not formally declare that the proposal had been carried. Stringer J. held that the giving of the respective figures for the votes

for and against the proposal was a sufficient declaration that the proposal had been carried by the requisite majority. That case was one relating to a poll for a loan, and the declaration by the Chairman did not declare the poll was carried, but he did declare the number of votes for and against the proposal. Under that statute there was a duty cast upon the Chairman to send to the Minister a notice of the number of votes recorded for and against the proposal, and to declare the proposal to be carried or rejected as the case may be. The learned Judge, Stringer J., considered under those circumstances that a declaration of the votes for and against the proposal constituted a sufficient declaration of the result of the poll. That case was cited as one indicating that want of strict compliance with the precise terms of the statute was not fatal.

Although not free from doubt, I think that the declaration in this present case was not invalidly made. The consequences might be serious if the ratepayers were delayed in the making of a change in the rating system due to a mere blunder in the form of compliance with certain formalities. Although my view is that the declaration of the result of the poll is valid, still, I consider that *ex abundanti cautela* the irregularities should be cured under s. 99 of the Rating Act if possible. It was stated at the Bar that a promise has been given that if this poll is found to be irregular, such irregularities will be waived under that section. That answers the third question in the originating summons. I answer that question first because it should have been the first submitted.

The next question in the order for answering is question No. 1. On the 8th October, 1945 the Council of the plaintiff Corporation by resolution determined that pursuant to s. 4 of the said Act, the system of rating on the annual value should in future be in force in the said city, and a copy of that resolution is as follows:

"It was resolved on the motion of His Worship the Mayor, seconded by Councillor Gregory—

'That the Lower Hutt City Council being a Local Authority of a district in which the system of rating on the unimproved value is not in force, by resolution determines that in future the system of rating applicable to the City of Lower Hutt shall be on the annual value'."

The form of this resolution is misstated in question No. 1 of the originating summons. It is there stated that the resolution determined that the system of rating on the annual value "*shall be in force in the District as from the 1st day of April, 1946.*" If the resolution had been in that form the city's position in respect of that resolution would have been I think, immune from attack. I consider that the resolution as actually passed is a nullity. Had it been in the form as misstated in the first question in the case, then in my view it would have been unquestionably valid. I shall amplify that point later on.

On the 16th November, 1945, the council, pursuant to s. 8 of that Act, appointed a valuer, and on the same day he duly made and subscribed the declaration required by the said Act. The valuer duly prepared and signed a valuation list in the form No. 2 in the schedule of the said Act, and transmitted it to the council before the 15th day of January, 1946,

and that list lay open for inspection until the 15th day of February, 1946. Those formalities were all fulfilled in purported pursuance of ss. 8 and 15 of the Rating Act. I see no reason why these matters preliminary to bringing into operation annual value rating should not be done in anticipation once the necessary poll has been obtained.

One of the facts stated in the case is that the council in the circular which was sent to ratepayers prior to the poll gave an undertaking that if the said proposal was carried it would pass a resolution adopting the system of rating on the annual value. It does not seem to me that this circular is either material or relevant to the questions submitted in the case, except in so far as it indicates that it had determined prior to the poll that if the poll was successful it would adopt a third system of rating, which is neither rating on unimproved value nor rating on capital value, and that is what it purported to do by the resolution of the 8th October, 1945, before mentioned.

In s. 4 of the Rating Act 1925, three systems of rating are referred to, these being rating on (a) annual value, (b) capital value, (c) unimproved value.

As before indicated the Lower Hutt City originally used the system of rating on the capital value, and it continued using that system till it, pursuant to a vote of ratepayers, changed to the unimproved value system in the year 1921. Thereafter it used the unimproved value system until it proceeded last year to change it for the third method of rating known as the annual value system. The first question asked in this summons involves an examination of the steps taken by the Hutt City Corporation to change from the unimproved value system to the annual value system. Although it is possible for a direct change to take place from the capital value system to the unimproved value system or *vice versa*, it is not possible to accomplish a change from the unimproved value system to the annual value system without at least a nominal reversion, say for a day, to the capital value system. Section 4 of the Rating Act in effect prevents a direct change from unimproved to annual value, because it forbids a local body in whose district the unimproved value system is in force, from passing a resolution to effect a direct change. A change to the unimproved value system of rating requires the approval of a poll of ratepayers, and having once adopted that system a change back to rating on capital value also requires the sanction of a poll of ratepayers.

The first thing such a local body must do is to obtain a poll of ratepayers by the necessary majority of votes to authorise the discontinuance of the unimproved value rating system. And the effect of the due carrying of a poll authorising such a discontinuance is clearly set out in s. 45 of the Rating Act. It reads as follows:

"If such rescinding proposal is carried in any district, then, from and after the thirty-first day of March succeeding the date of the gazetting of the Chairman's notice of the result of the poll, rates shall cease to be made and levied on the unimproved value, and shall be made and levied in the manner in which they were made and levied before the adopting proposal was carried."

Assuming the poll to be validly made, or (if invalid) assuming that invalidity to have been cured, there is a dispute between the parties as to the effect of the resolution of the 8th October, 1945. The dispute is as to the moment of time from which the resolution became operative. For the defendant it is claimed that such a resolution could not become operative or of any legal effect until the 1st April, 1946. The City Council disputes that view, and claims that there is a certain operative effect, the details of which I shall endeavour to explain. To resolve this dispute involves firstly an examination of the relevant provisions in the Rating Act 1925, the first of which are ss. 3 and 4 of that Act.

Section 3 refers to three systems of rating, as already detailed. At the time of the taking of the poll already mentioned, the system in operation at the Hutt City was rating on unimproved value. Having got a poll discontinuing rating on unimproved value, it was desired to take the necessary steps to adopt rating upon the annual value. As already indicated a change of the method of rating from unimproved value to capital value or *vice versa*, can be comparatively easily done, provided the necessary poll of the ratepayers authorises a change, and the scheme of the Act is that if it is desired to change from the unimproved value system to the annual value system, then that change can only be accomplished in the case of a local body which has adopted the system of rating on unimproved value (as was the position here) by first obtaining authority from the ratepayers to discontinue the unimproved value system. Assuming for the purpose the validity of the poll, then the Hutt City Corporation has so far progressed upon its journey to annual value by having obtained the consent of its ratepayers to discontinue its present system.

Next we turn to s. 45 (already quoted), as to the effect of a rescinding proposal having been carried as is the position here. The system of rating originally followed in the Hutt City was rating on capital value, but as already stated the City, when it was a Borough, changed in the year 1921 to the unimproved value system. Consequently, therefore, s. 45 requires that from and after the gazetting of the result of the poll, the Borough must continue rating upon the basis of unimproved value until 31st March, 1946. Thereafter, pursuant to s. 45, as from the 1st April, 1946, the city reverts to the capital value system.

As already indicated, the ratepayers of Lower Hutt had been promised that the basis of rating to be substituted for the unimproved value basis, was to be rating upon the annual value. I repeat that all that it can accomplish by valid resolution passed on the 8th October, 1945, would be one making rating upon annual value operative only as from the 1st April, 1946. If, therefore, the question were asked (as it is asked in this appeal), what was the system in operation between the date of the poll and the 31st day of March, 1946, unquestionably the answer would be that it was rating on the unimproved value system, because it is abundantly plain from s. 45 that the poll discontinuing that system is effective only from and after the 31st March, 1946.

Section 45 makes it plain that once the discontinuing poll is carried, then as from the 1st April succeeding that poll, the capital value system automatically comes into being because the capital value system was the system in operation in the year 1921 immediately before it changed to the unimproved value system.

Considerable argument was submitted to us, aimed at putting a gloss upon s. 45, by somehow bringing in by means of the resolution of the 8th October, 1945, an implication in favour of the existence of rating on annual value to a limited degree, but in my view the meaning of s. 45 is plain and there is not the slightest doubt that until the 31st March, 1946, the Hutt City was "a district wherein the system of rating upon the unimproved value" was in force. Those words are taken from s. 4 (1) of the Rating Act, and in relation to this matter that section is of great importance. It reads:

"The local authority of any district (other than a district wherein the system of rating on the unimproved value is in force) may at any time by resolution determine whether the system of rating on the annual value or the capital value shall in future be in force in the district, and any such resolution may from time to time be rescinded and a new resolution passed."

Section 4 is the section which authorises and provides the method of (inter alia) discontinuing or adopting the system of rating on unimproved value. Had it not been for the exception embodied in s. 4 (1) above quoted, then it would have been possible to make a direct change from annual value to capital value or vice versa, and one reason why that special exception was inserted in that subsection is that as will be seen by reference to s. 8, the valuation roll which is used for rating by local bodies rating on the capital value or unimproved value, is a roll supplied by the Valuer General under the Valuation of Land Act 1925, but when we look at s. 7, it will be seen that where the system of rating on the annual value is in force, a valuation is to be made as later provided in the Rating Act. The machinery for making the roll to be used where annual value is in vogue, is set out in ss. 8 to 37 of that Act. Those sections contain a complete code for the making of a valuation list by a valuer or valuers appointed by the local body, and provide also for the ultimate moulding of that valuation list into a valuation roll after a specially constituted Assessment Court has dealt with all objections thereto.

In the case of municipalities using the unimproved value or capital value system, they obtain their valuation roll ready-made from the Government Valuation Department.

For the purposes of this judgment, importance attaches to the fact that the valuation roll which is used for rating on the annual value is brought into being by the local body itself, and all disputes as to values are settled by a Court, the Judge of which is a Magistrate exercising jurisdiction within the district, and of the two assessors constituting the remaining members of the Valuation Court, one of them is to be appointed on the recommendation of the local authority.

Mr. Sim submitted to the Court at some length an argument that the words "is in force" in s. 4, had a dual meaning, namely "in force" for present rating purposes, or "in force" only for future rating purposes, and he claimed that those words in s. 4 (1), which subsection I have quoted in full, are used in the second sense, and he endeavoured to persuade the Court that if that meaning was adopted, as he claimed it must be, then the bracketed exception in s. 4 (1) would become inapplicable to the Hutt City, and the effect of that would be to get rid of the exception in s. 4 (1), and thus permit the Hutt city to pass the resolution contemplated by s. 4 (1), notwithstanding that the City would, until the 31st March, still be rating on unimproved value. A resolution to that effect was purported to have been passed by the Council of the Hutt City on the 8th October, 1945, Exhibit "C" of the case. I entertain no doubt that s. 4 (1) means and was intended to mean that any local body using the unimproved value system of rating cannot, while that system is in force, validly alter its system to the annual value or the capital value system without the imprimatur of another poll of ratepayers, and the words "in force" mean the period up to which it is entitled to and bound to use the unimproved value system of rating.

Turning to s. 45 again, that section means no more and no less than that if a rescinding proposal is carried that rescinding proposal becomes operative only to change the system of rating as from the 31st March next succeeding the declaration of the result of the poll. It is to be observed that any Borough desirous of making the change necessary to bring in rating on the unimproved value basis, would have to comply with all the procedure provided by ss. 39 to 47, and by s. 43 the same result as *mutatis mutandis* is provided in s. 45 is attained. That means that notwithstanding a successful poll to adopt unimproved value, it is not until after the 31st day of March succeeding the gazetting of the result of such a poll that rates must be made and levied on the unimproved value. Thus it is that s. 43 and s. 45 is each the complement of the other.

I am clearly of opinion that although the resolution purporting to adopt annual value was passed on the 8th October, 1945, the system of rating on unimproved value must remain in force and operative as contemplated by the exception in s. 4 (1) and accordingly, therefore, that system remains operative and thus "in force" up to and including the 31st March, 1946. Actually that resolution in effect recites that the unimproved value system was not, on the 8th October, 1945, in force in the Hutt City. The recital that unimproved value was then not in force is inaccurate and the fact that they so recite cannot give them jurisdiction to pass by means of a resolution to change to annual value, the passing of which is forbidden in effect to all Boroughs using the unimproved value system.

Although the resolution of the 8th October, 1945, is, in my view, nugatory as already explained, nevertheless immediately rating on capital value has become in force and operating in the City by reason of the carrying of a poll to discontinue the unim-

proved value system, then under s. 45 the exception already referred to under s. 4 (1) of the Rating Act, is no longer a bar to the City passing a resolution determining that the system of rating on the annual value shall be in force in the district. In other words, the resolution of the 8th October, 1945, if it had been passed on the 1st April, 1946, or although passed on the 8th October, 1945, had been expressed to become operative only on and after that date, would have been a valid resolution. True, s. 7 of the Act requires that a valuation roll shall be made. But that is a job that takes time,—it may take some months, and a good deal of preparation, and I can see nothing in the Act to forbid the council getting ready for the change to annual value at the earliest moment it is legally possible for it to make such a change. Indeed, s. 4 (1) of the Act contemplates that the resolution to change to annual value will be operative *in futuro* because it uses the words “shall in future be in force in the district”. Valuation rolls may be made either annually or triennially, the latter of which looks somewhat to the future. There is a difference between a valuation list and a valuation roll. The former is what the valuer prepares and he may be working on it for months getting ready for the time—the 15th January—when he has to produce it. The valuation roll, upon the other hand, is what is produced by the Assessment Court after it has sat and heard and determined all objections (see s. 33). If the valuation list is not duly produced by the valuer, then s. 31 empowers the Assessment Court to appoint valuers and prescribes the formalities there required. This indicates that a valuation list may be produced later than the statutory date. Thus it is plain that the non-production of a valuation list on due date is not fatal and it is clearly curable.

The matter of making rates is also a lengthy business and full of formalities running well into any rating year before the rate can be demanded.

I have already referred to the machinery provided for the appointment of valuers and so on, and we learn from the case that a valuer was, pursuant to s. 8, purported to have been appointed on the 16th November, 1945. I can see no legal objection to such an appointment being made in advance and the work being done by him. I do not overlook the fact that the resolution of the 8th October, 1945, is, in my view, nugatory, but the whole of the ratepayers of the Hutt knew that the poll—whether legally declared or not—had expressed the voice of the requisite majority of the ratepayers of the City.

It is regrettable that the formalities called for by the statute have not been observed in respect of the resolution to bring in annual value, but there is much to be said for putting the blame on the statute or statutes.

The initial errors into which, in my view, the advisers of the council fell, were firstly the form of the declaration of the poll, and secondly the failure to make the resolution of the 8th October, 1945, operative only as from the 1st April, 1946. As earlier indicated, my view is that the irregularities regarding the declaration of the result of the poll can be overlooked but for abundance of caution

should be validated. But as to the resolution of the 8th October, 1945, there is no means short of statutory validations whereby the borough can set back the clock so as to make its nugatory resolution effective to have operation in respect of a time which is now some two and a half months past. That can only be done by statute.

We must commence from this point that there can be no doubt that the ratepayers have validly expressed their will and that expression must, if possible, be given effect to. It would be a grave injustice to the great majority of the Hutt ratepayers if their expressed determination as indicated by their votes validly cast, is to be set at nought owing to legal difficulties in a statute, or rather more than one statute, which are by no means easy to understand, and there are also pitfalls which can easily be stepped into.

What is to be done, and what can be done? The technical mistakes relating to the formalities of the declaration of the result of the poll because being innocuous will need no special repair except possibly for abundance of caution. The next error is that of purporting to make the change immediately to annual value by the resolution of the 8th October, 1945, and the putting in of an incorrect recital. That motion purports to have only future operative effect, and if it had been expressed to have made that future effect not to begin till the 1st April, 1946, the resolution might have had a chance of survival notwithstanding its incorrect recital. But those two blots were I think, fatal to that resolution, and the only way, short of statutory corrections and validation, would be to start afresh with a new resolution to bring in annual value rating forthwith.

If the council had been advised to act with abundance of caution, it could have waited until the 1st April, 1946, to change from capital value to annual value, and in the meantime gone ahead with its preparations for the providing of the necessary valuation roll. The statute (s. 8 (4)), requires a valuation list to be made before the 15th January, and s. 15 requires that list to be open for inspection till the 15th February, with public notice thereof once a week. The right of inspection is given to all ratepayers. In order to be in time to fulfil those requirements, it had to commence on its valuation duties and its deposit of the valuation list long before the 1st April, which was the date when the changed system to capital value became operative. The earliest date that it could change the capital value system to annual value was 1st April, 1946. All those matters presented legal difficulties and looking back I consider that the least risky course would have been to have passed the resolution to change from capital to annual value rating on the 8th October last, but making it plain that such resolution was not to be operative until the 1st April, 1946. They could at once have proceeded (as apparently they did) with the fulfillment of the various statutory requirements as to the making of a valuation roll in anticipation of the coming into force on the 1st April of the capital value system as provided by s. 45. It was the hurdle provided by the fixed dates already indicated that made the

council take precipitate action. Section 31 makes plain that that delay is curable if it is desired to pass a fresh resolution now. The preparation of validating legislation will require great care and expert advice, and possibly consultation with the Law Drafting officers.

I suggest the following answers to the questions propounded:

Question 1:

The answer to this question is "Yes", but I must add that the question as framed is based upon imaginary facts. The statement is not correct that the council validly determined that annual value rating should be in force "*as from the 1st day of April, 1946*". Moreover it erroneously recited that the unimproved value system was "in force" in the Hutt City at the date of the passing of the resolution of the 8th October.

Question 2:

My answer to that question is that if the poll had been validly declared as I think it was and if the resolution of the 8th October, 1945, had been framed to be operative only from and after the 1st April, 1946, then the steps taken to prepare a valuation list and the depositing of the same would, in my view, have been valid. The facts in relation to the lengths to which the council went in relation to completing the valuation list and the valuation roll are not stated. I repeat that in my view the council could have validly completed several steps towards bringing in annual value rating as from the 1st April. I have already explained the difference between a valuation list (s. 8 (4)) and a valuation roll (s. 33). This question speaks of a valuation "roll" when obviously it is a valuation list that is referred to.

Question 3:

My answer to this is "Yes".

JOHNSTON J.—I have had an opportunity of reading the judgment of Mr. Justice Cornish and for the reasons given by him I think each question raised should be answered in the affirmative.

FAIR J.—Prior to the year 1921 the system of rating in force in the Lower Hutt Borough was rating on the capital value. In that year, the system was duly changed to rating on the unimproved value. Pursuant to a poll duly taken on September 8, 1945, the system of rating on the basis of the unimproved value, was, on September 10, 1945, declared by the substitute returning officer to have been rescinded. On October 8, 1945, the Council of the Lower Hutt City by resolution determined, professing to act under the powers in section 4 of the Rating Act 1925, that the system of rating on the annual value should in future be in force in the said City. On November 16 it appointed a valuer pursuant to section 8 of that Act who duly prepared and signed a valuation list in the prescribed form and transmitted it to the Council before January 15, 1946. Thereafter all matters necessary to enable a rate to be made and levied on the annual valuation

were done and all necessary steps taken to comply with the provisions of the Act were taken.

Subsequent thereto the Town Clerk was informed that a number of ratepayers questioned the validity of the proceedings taken to enable the rate to be made and levied on the system of rating on the annual value of the property in the City, and stated that power to do so would be challenged in the Court. The City Council, therefore, issued an originating summons under the Declaratory Judgments Act asking the Supreme Court to determine whether such power existed. That summons was removed into this Court.

The first question asked in it involves a determination as to the meaning of the words "other than a district wherein the system of rating on the unimproved value is in force" in section 4 (1) of the Act. That subsection reads as follows:

"4. (1) The local authority of any district (other than a district wherein the system of rating on the unimproved value is in force) may at any time by resolution determine whether the system of rating on the annual value or the capital value shall in future be in force in the district, and any such resolution may from time to time be rescinded and a new resolution passed."

This question requires to be determined on the assumption that the poll was duly taken and the steps required by the Act to be taken in respect of it were effective to satisfy the requirements of the Act. Upon that assumption section 45 comes into operation. That section provides as follows:

"45. If such rescinding proposal is carried in any district, then, from and after the thirty-first day of March succeeding the date of the gazetting of the Chairman's notice of the result of the poll, rates shall cease to be made and levied on the unimproved value, and shall be made and levied in the manner in which they were made and levied before the adopting proposal was carried."

Plainly this section continues the operation of the system of rating in force at the time the proposal for rescission was being considered until the 31st of March next succeeding the gazetting of the notice. Therefore, that system remains "in force" until that date. It is equally clear that from that date onwards the City would be required to revert to rating on the capital value until that was changed either to rating on the annual value, or the unimproved value. A change to the capital value involves no special measures on the part of the local body concerned for, by section 6, the valuation roll supplied by the Valuer-General under the Valuation of Land Act 1925 is the valuation roll for rating on the capital value. A change to rating on annual value, however, requires a special valuation of such annual values to be made, and section 8 and sections 15 to 34 make elaborate provisions with reference to it, to some of which I shall refer specifically later. The whole purpose of them, however, is to enable a local body, and any persons aggrieved and ratepayers to be informed on, and thereafter if they so desire, to challenge the correctness of such valuations. The provisions are based on the assumption that the valuations are to be used in respect of rating for a rating year commencing about the first of April. This is shown by the fact that every objection is required to be delivered at the place of sitting of the assessment court set up in the Act on

or before February 15. It would appear that unless the valuation list is prepared before January 15 (section 8 (4)), and deposited at some convenient place to be publicly notified by the beginning of February (section 15) in a year when valuation is required to be made, the valuation roll may not be lawfully used by the local body as the basis of its valuation for that year. These matters are adverted to to show the necessity for taking steps well before the 31st March where it is necessary to prepare valuation lists in a district where there is in existence no valuation roll that can be used, as in the present case.

The objection raised to the Council's resolution to adopt the system of rating on the annual value is that it is debarred from doing that by the words I have quoted from section 4 which excludes that power in the case of a district "where the system of rating on the unimproved value is *in force*". It is clear that, by virtue of the provisions of section 45 rating on unimproved value was "*in force*" in the Lower Hutt City until March 31, 1946 and so was in force when the resolution was passed. The words under consideration, if read without a consideration of the machinery of the Act and their purpose would appear, *prima facie*, not to authorise the passing of the resolution prior to March 31, 1946. The result of this construction would be that the resolution could not be passed until after that date and owing to the provisions regarding the preparation of the valuation roll to which I have referred, and the dates fixed for the steps with regard to it, rating on annual value might not be able to be validly brought into force until the year commencing April 1, 1947.

This would mean a hiatus of a year before the Council could exercise the powers given it after the poll, by section 4 (1). It would also necessitate the City being obliged to strike a levy of one year's rates on the basis of the capital value before commencing its rating on the annual value. These seem such arbitrary and anomalous results as to make it unlikely that the *prima facie* meaning of the words of the subsection, when read alone, is the proper meaning to be given to them. There is no reason to be found in the statute, or elsewhere, for considering that the Legislature intended to impose any such delay or condition before immediate effect could be given to the ratepayers' wishes. On the contrary, section 4 (1) expressly and clearly intends to sanction the change from the system of rating on the capital values to the system of rating on annual values or *vice versa* upon the decision of the governing body of the district involved, and that without any poll or any special formalities other than those involved in the preparation of a special roll for rating on annual values. For a change to or from unimproved value to a different system of rating, a poll and much more elaborate steps are required. As rating on unimproved value was introduced only in 1896 it may well be that the introduction or abandonment of what was then a new and novel system was intended to be protected against hasty and short term decisions by a snap or bare majority vote of the Council of a district, and that it was only to be introduced or abandoned after an opportunity

for careful consideration by, and a determination at a poll by the whole body of ratepayers affected.

There are no such safeguards imposed on a change from the annual to the capital system or *vice versa*. There is no indication that one rather than the other of these two systems was considered the more desirable: nor is there any indication that any checks or safeguards as to a decision by the Council were required. It seems, therefore, that if it was intended that there should be a delay of a year before a City or Borough, whose system of rating was originally on capital values could be changed to rating on annual values, it was not expressed in any explicit, or indeed, in any implied terms by the Legislature. If that situation does exist, it must be owing to the fact that these few words in brackets in section 4 (1) cause that result.

That it was probably unintended seems to be shown by the fact that there is no such delay or obstacle in changing directly from unimproved to capital value, for no special valuation roll has to be prepared in that case, and the resolution may be passed and become effective after April 1 in the rating year in and in respect of which the rates have to be levied. It is confirmed, too, by the fact that the change could probably have been made after the second of April if the valuation roll prepared for the first year's levy on that system can be prepared and used before the resolution of the Council as to the system of rating is made. That no safeguards were considered necessary in respect of the adoption of rating on annual values or a reversion to it, and that a necessary delay for a year would be anomalous, seems shown by the fact that there is no such delay where the system in force in the district before that upon unimproved values was adopted was rating on annual values, for there is an immediate reversion to it.

In such a case such reversion seems to imply that valuation rolls should be prepared prior to April 1 and that they are effective and valid. That, I think, shows beyond doubt that section 7 of the Act and the succeeding sections authorise the preparation of such a roll prior to the rating year in which it is to be used. It would be unreasonable if, though such preliminary steps in such a case are valid, the resolution passed in September to take effect after April 1 was not also valid.

The words in question are quite capable of bearing the meaning "*in force at the time the resolution becomes operative*" and, I think, the foregoing consideration of the scope and purview of the statute shows that to be the meaning that must be given. Mr. Cousin's argument involved that the words in section 4 may mean "*in force at the time the resolution is passed*". As I have said, that would be a possible meaning and, indeed, perhaps the *prima facie* meaning, if the section were read apart from its context and the scheme and purpose of the Act. But in my view, for the reasons I have stated, that is not the meaning which it was intended to bear. To accept the primary meaning would be to adopt a superficial interpretation, adopting a construction amounting to grammatical literalism and ignoring the real purpose, meaning and true intent of the

provisions; and would, I think, be justly open to the reproach expressed in the maxim *Qui haeret in litera haeret in cortice*.

This may, perhaps, be best illustrated by pointing to the fact that the words "in force" must apply to some period of time. The provisions of the Act, and particularly section 4 (2) and sections 39 to 47 referred to in it show that the words in brackets in section 4 (1) apply to a case where a poll for a change in system has not been taken. Subsections (1) and (2) of section 4 are complementary sections. They are intended to cover all three systems of rating and provide machinery for changing it. The purpose of the words in brackets in subsection (1) is merely to exempt from the powers conferred by that subsection the adoption, or discontinuance of the system of rating on the unimproved value, and the words must be read in the light of that purpose. If they are extended to delay a change from the capital to the annual value system then it would be extending them beyond their purpose. Such a construction is not to be adopted unless the words are not fairly capable of an alternative construction in harmony with the scheme of the Act for enabling rating authorities to change the system. But they are fairly and reasonably susceptible of an alternative meaning. Indeed, it appears to me, that the only reasonable meaning is to take them as applying to the case of where a system of rating on unimproved values is "in force" at the time the proposed change is to be given effect to—that is, in force over a period for which the rates on the new system are proposed to be levied. In this case that period would be from April 1, 1946, to March 31, 1947. For that period, unless the terms of the Act were not complied with in relation to the change, rating on unimproved value will not be in force.

This construction is strengthened by the use of the words "in future" in section 4 (1).

I think, therefore, the answer to the first question should be "Yes".

It follows, too, that the answer to the second question should also be "Yes".

The question as to the effect of the notice of the result of the poll not complying with all the requirements of section 42 depends upon a consideration of sections 44 and 42; and the principles determining what are the consequences of such non-compliance with this kind of provision. Section 44, as amended in 1941, provides:—

"44. (1) The adopting proposal may be rescinded in the manner and subject to the conditions, with the necessary modifications, prescribed by this Act for the carrying thereof.

(2) The Chairman shall publish the result of the poll within the time and in the manner hereinbefore prescribed in the case of an adopting proposal."

The time and manner for the publication of the result of an adopting proposal is prescribed in section 42 which reads:—

"42. Within twenty-one days after the result of the poll has been ascertained the Chairman of the local authority shall cause a notice of the number of votes recorded for and against the proposal, as hereinbefore provided, to be published in the Gazette, and also in one or more newspapers circulating in the district; and in such notice he

shall declare the proposal to be carried or rejected, as the case may be."

It is first to be noted that the word "publish" in section 44 (1) would mean, if it stood alone, "cause to be published"; and this meaning is confirmed by the express provision in section 42. The facts in evidence before the Court show that the Mayor complied literally with every requirement in section 42, except that he did not declare that, as a result of the voting, the poll had been carried. The substitute returning officer under his directions and upon his instructions did this.

The question then resolves itself into whether this omission renders the notice wholly ineffectual to bring into operation the provisions of section 45.

Some indication as to the relative importance to be attached to the notice, as contrasted with the declaration that the proposal is carried, may be gathered from the fact that section 45 refers to "the gazettement of the Chairman's notice of the result of the poll"; although I do not overlook the fact that section 42, read literally, directs that the notice is to contain a declaration by the Mayor that the poll is carried.

Such a declaration seems really only intended to add an appropriate conclusion and formal authorisation to a notice that has already effected every substantial purpose for which publication is required. For, if the Mayor causes the number of votes to be published in the Gazette and another newspaper, that must necessarily imply that he considers the poll to have been regular and in accordance with law. Section 45 refers to the result of the poll being ascertained and section 42 to it being carried. The publication of the result having been done with his authority and, apart from his declaration in the manner prescribed, the case falls, I think, within the principle of the decision in *Leonard v. Salmon* (1922, G.L.R. 375; 1922, N.Z.L.R. 1068). True, there the returning officer had his name published with the notice but in this case the signature by the substitute returning officer was a clear indication of official authentication—not required by the section—of the voting: and having regard to the voting, 1560 for the proposal and 284 against, it is inconceivable that any ratepayer could have had any doubt that it was carried. That would be true in practically every poll on such an issue which, as everyone knows, is generally a matter of discussion and personal interest by those voting. Moreover, the word "declare" may mean in this context "cause to be declared". These considerations show, in my opinion, that so far as this requirement in the form of the notice is concerned the section is directory. To hold otherwise in this, and other cases, would prevent the ratepayers' decision being given effect to owing to failure to comply with a requirement intended to add formality to a notice already clear, adequate and issued by authority.

This construction seems confirmed, too, by the general principle of interpretation applicable to such provisions. That is set out in *Maxwell on the Interpretation of Statutes* (7th Edn., 321, 323-4). *Halsbury* (Vol. XXXI, 530) says:

"Where the provisions of a statute relate to the performance of a public duty, and the case is such that to hold null and void acts done in neglect of that duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, such provisions should be construed as being directory only and not imperative."

This passage is taken verbatim from the judgment of the Privy Council in *Montreal Rail Coy. v. Normandin* (1917, A.C. 170). It seems to apply with full force to the result of a poll which is declared by the returning officer, and as to which all the ratepayers being the persons concerned have the right to vote and must have had full information and an adequate knowledge as to the results of it being carried.

I think, therefore, that the notice was a sufficient compliance with section 44 (2) and the notice was effective for all purposes.

CORNISH J.—Section 3 of the Rating Act 1925 is as follows: "The system of rating (whether on the annual, the capital, or the unimproved value) which is in force in each district on the coming into operation of this Act shall continue until altered under the provisions of this Act."

Section 4 (1) of the Act provides "that the local authority of any district (other than a district wherein the system of rating on the unimproved value is in force) may at any time by resolution determine whether the system of rating on the annual value or the capital value shall in future be in force in the district. . ."

Section 4 (2) enacts that "for the purpose of adopting in a district the system of rating on the unimproved value or of discontinuing that system in a district where for the time being it is in force the provisions of secs. 39 to 47 hereof shall apply".

(These last named sections require a poll of ratepayers for the purposes mentioned in the subsection).

These provisions of the Rating Act are machinery created by the Legislature for the purpose of facilitating local taxation. Their purpose is to enable owners or occupiers of real property in the various districts of New Zealand to choose the system on which domestic taxes shall be levied, and to change that system when they wish to do so.

The Legislature is indifferent as to which system of rating any district chooses to adopt. Its only concern is to provide machinery by means of which the will of the ratepayers (or their representatives, the local authority) may be expressed and made effective.

Examination of the sections quoted above shows that any "determination" of a local authority is directed to the future, and the future only. It is not intended to become operative at the moment when it is made. The system of rating that is in force at the time of the determination must run its course. Only when the current rating period has expired will the determination become effective. The future, not the present, is under the control of the local authority. But this control is not unlimited. If there be a question whether the system of rating

on the unimproved value is to be in force in future, only the *ratepayers'* decision can settle that. And that system *will* be in force in future if the ratepayers decide: (1) that it shall be adopted in place of rating on the annual or the capital value, or (2) that, having been previously adopted, and being now in force, it shall continue to be in force. The second case will occur when a proposal to discontinue the system has been defeated at a poll.

In a district in which rating is, for the time being, on the unimproved value, these alternatives in respect of the future exist:

- (1) The system *will be* in force "in future", i.e. after the current rating period has ended. This is because it has either not been challenged, or has survived a challenge.
- (2) The system *will not be* in force "in future" because the ratepayers have so decided. A challenge has succeeded.

In such a case, the only future possibilities are rating on the annual value and rating on the capital value. Between these, the local authority is competent to decide. In my opinion, the words in brackets in s. 4 (1) "other than a district wherein the system of rating on the unimproved value is in force" are not intended to withhold from the local authority power to make such a decision. All that they mean is that the local authority may not make a determination in the first of the alternatives I have mentioned above. A local authority may legislate for the future rating of a district provided it does not purport to adopt or to abandon that system. Only the body of ratepayers may decide to do either of these. But, if the future is unencumbered by the system of rating on the unimproved value: if this system has been eliminated from the list of future possibilities so that the field of choice is narrowed to rating on the annual value and rating on the capital value: then, in such a case, there is nothing to prevent the local authority from determining by resolution which of these two systems of rating shall prevail.

In my opinion, the words in brackets in s. 4 (1) should be read thus: "other than a district wherein the system of rating on the unimproved value is *to be* in force" (in future). I think that such a reading is necessary if effect is to be given to the purpose of the sections that I have quoted. To read them literally in the present tense would be to inflict on a local authority a purposeless disablement.

When, therefore, the City Council of Lower Hutt determined by resolution that the system of rating on the annual value should come into force "in future", it made provision for a future that was clear of rating on the unimproved value. The clearing had been done by vote of the ratepayers. The Council did not tamper or interfere with the system of rating on the unimproved value either in the present or for the future. Its resolution was directed to a period of time when, as the result of the poll already held, rating on the unimproved value should have spent its force in the district. That period began on the 1st April, 1946. When, therefore, the Council determined that the new

system of its choice should come into force "in future", it determined, in effect, that it should do so as from the 1st April, 1946.

In my opinion, the Council disregarded no limitation imposed upon it by s. 4 (1) of the Rating Act 1925. That which it was impliedly forbidden to do, viz. to adopt or to abandon the system of rating on the unimproved value, it neither did nor attempted to do. All that it did was to make provision for the situation that would arise hereafter on the passing of the system which the ratepayers had rejected.

It is contended, however, that s. 45 of the Rating Act 1925 shows that no such provision was necessary or, indeed, possible. This section provides that from and after a certain date, when the system of rating on the unimproved value shall have ceased to be in force in a district, "rates shall be made and levied in the manner in which they were made and levied" before the system of rating on the unimproved value was adopted. It is argued that "the manner" in which rates were formerly made and levied in the district was on the capital value; and that the district was, therefore, compulsorily remitted to that system as soon as the system that had been rejected at the poll had ceased to be effective.

To the question, "*In what manner were rates made and levied in the Lower Hutt district before rating on unimproved value came into force?*", any answer given must if it is to be complete—state that these were made and levied according to the system determined upon from time to time by resolution of the Council. No adequate description of "the manner" in which they were made and levied could omit reference to the means by which either of the two possible systems was brought into operation.

When therefore, rates ceased to be made and levied on the basis of the unimproved value: and when, immediately thereafter, they came to be made and levied *just as they used to be made and levied* before rating on unimproved value was adopted, it follows that they then fell to be made and levied pursuant to resolution of the Council. If, when the moment of change-over arrived, there was in existence a resolution of the Council covering the needs of the new situation, so much the better: the rates would then be made and levied in accordance with the system adopted and approved by that resolution. In my opinion, therefore, the resolution of the City Council of Lower Hutt, passed in anticipation of its becoming operative as soon as resolution by the local authority should become the determinant of rating, was within the power of the Council; and was effectual to establish annual value as the basis of rating from the moment that the rejected system expired.

I have so far assumed that the result of the rescinding poll was published in accordance with the requirements of the statute. If not, it may be that the system of rating on the unimproved value was not effectually terminated. In reference to a rescinding poll, s. 44 of the Rating Act 1925 states that:

"The Chairman shall publish the result of the poll within the time and in the manner hereinbefore prescribed in the case of an adopting proposal".

And s. 45 provides that if a rescinding poll is carried in any district

"then from and after the 31st day of March succeeding the date of the gazetting of the Chairman's notice of the result of the poll, rates shall cease to be made and levied on the unimproved value"

In the present case, the official who actually signed the gazetted notice was not the Chairman or Mayor but a gentleman described as the "substitute Returning Officer". For that reason, it is contended that the notice was not a "Chairman's notice", and that the condition of the termination of rating on the unimproved value was never fulfilled. In my opinion, this contention is not well founded.

The duty cast upon the chairman in the case of a rescinding poll is substantially the same as in the case of an adopting poll. In the latter case, s. 42 requires that the chairman "*shall cause to be published*" in the Gazette a notice of the number of votes recorded for or against the proposal, and the fact that the proposal has been carried or rejected. Such an announcement is a "Chairman's notice" (s. 43) and, from and after the 31st March succeeding its gazetting, rates shall be made and levied on the unimproved value.

In my opinion, there is no difference of substance between a notice that has been personally signed by the Chairman and one that has been signed (as was the notice in this case) with his authority and on his behalf. Each is a "Chairman's notice". The notice under consideration made express reference to s. 43 (2) of the Act, thereby purporting to be made under that section, and showing that the act of publishing the result was the act of the Chairman. It is true that in the case of a rescinding poll the statute provides that the Chairman "*shall publish*" the result: and, that in the case of an adopting poll that he shall "*cause the result to be published*". In my opinion, the expressions are convertible. There is no reason to think that the Legislature regarded the announcing of the result of a rescinding poll as requiring precautions deemed unnecessary in the case of an adopting poll. In my opinion, the notice signed by the Returning Officer was a notice "published" by the Chairman by his authorised agent and was a valid Chairman's notice.

For the foregoing reasons, I consider that each of the questions raised by the Originating Summons should be answered "Yes".

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