[HIGH COURT OF AUSTRALIA.]

BEACH TRAMWAY SUBDIVISIONS PROPRIETARY LIMITED . . . APPELLANT;
PLAINTIFF,

AND

CITY OF SANDRINGHAM . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

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MELBOURNE, *Nov.* 1, 2, 5, 1934; *Feb.* 21, 1935.

Gavan Duffy C.J., Starke, Dixon and Evatt JJ.

*Railway Construction—Rate—Resolution to strike rate—No power to revoke resolution—Railway constructed and operated—Discontinuance of railway—Subsequent striking of rate—Continued operation of line not condition precedent to striking of rate—Rate books prepared for purpose of rate—Part of rate—Evidence of liability of frontagers—Black Rock to Beaumaris Electric Street Railway Acts* (*Vict.*), 1920 (*No.* 3110), *secs.* 30 (7)-(10)*, 31, 1924 (*No.* 3324), 1928 (*No.* 3627).

A street railway was constructed and operated pursuant to an Act of Parliament, and was subsequently discontinued. The cost of certain alterations in and improvements to the streets, in which the street railway was to be laid, was thrown upon the municipality. The money borrowed to meet this cost was to be repaid by means of a street railway rate which the Council was empowered to levy upon the owners of lands which, in its opinion, would be materially enhanced in value by the construction and operation of the line. No rate was struck until after the line was discontinued.

*The *Black Rock to Beaumaris Electric Street Railway Act* 1920 (Vict.) provides, by sec. 30:—"(7) Before proceeding to make and levy the street railway rate the council through its clerk surveyor or other proper officer shall cause plans and descriptions to be prepared of all land which in its opinion will be materially enhanced in value by the construction and operation of the line. (8) Such plans and descriptions shall set forth the names of the respective owners or reputed owners lessees or reputed lessees and occupiers of such lands so far as may be known and also the frontage thereof in lineal feet to any street or road and the council shall give notice by advertisement in some newspaper circulating in the municipal district that such plans and

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*Held* that, when the Council had constituted a railway rate district in accordance with the provisions of sec. 30 (10) of the *Black Rock to Beaumaris Electric Street Railway Act* 1920 (Vict.), the Council could not recall or rescind the resolution constituting such district; and that it was not an essential condition of the power to impose a rate that the street railway should still be in operation at the time when the rate was struck.

*Held*, further, by *Gavan Duffy* C.J., *Dixon* and *Evatt* JJ. (*Starke* J. dissenting), that the rate books prepared for the purpose of the railway rate formed part of the "rate" which the Council adopted, and could be relied upon for the purpose of ascertaining the amounts for which persons sought to be made liable were rated.

Decision of the Supreme Court of Victoria (*Mann* J.) affirmed.

APPEAL from the Supreme Court of Victoria.

The appellant, Beach Tramway Subdivisions Pty. Ltd., brought an action in the Supreme Court of Victoria against the Mayor, Councillors and Citizens of the City of Sandringham, claiming declarations of right and consequential relief against the imposition of a street railway rate which the respondent municipality had purported to levy under the provisions of the *Black Rock to Beaumaris Electric Street Railway Acts* 1920-1928. The appellant alleged that the making of the rate was invalid, and supported this allegation upon a number of grounds. The line was constructed and handed over to the Railways Commissioners, who operated it for five years, but in October 1931 its operation was discontinued by them, and although the municipality had commenced in 1923 to take steps towards the imposition of a street railway rate, no rate was actually struck until 10th November 1932. The proceedings of the Council for the determination of the railway rate district were complete before the line closed, but the appellant contended that, as the line was no longer in operation, the basis had disappeared upon which

descriptions have been prepared and are open for inspection at the municipal offices for one month after the date of the notice and the same shall be kept open and available for inspection accordingly. (9) Within the said period of one month any such owner lessee or occupier may object to any such land being included in the street railway rate district or to any matters included in the said plans and descriptions. (10) When such plans and descriptions have been submitted to and approved by the council after all such objectors have been heard or have been given an opportunity of being heard by the council such plans and descriptions shall be sealed and such approval and sealing together with an announcement that such plans show the boundaries of the area which shall be the street railway rate district within which the lands are for the purposes of this section taken to be materially enhanced in value shall be published once in the *Government Gazette* and once in some newspaper circulating in the municipal district."

the statute intended that liability to the rate and the ascertainment of its amount should depend. The appellant also attacked the manner in which the Council proceeded in determining the railway rate district and afterwards in determining the rate.

Further facts are set out in the judgments of the High Court below.

*Hudson*, for the appellant. The railway rate district was never properly constituted in accordance with the Act, because no plans or descriptions were prepared, and if any such were prepared they did not contain the required particulars, and were never approved or sealed by the Council as required. The resolutions constituting the railway rate district were rescinded in 1929 before the rate was made. Assuming that there was a properly constituted district, the rate which the Council purported to make was bad, because it was not a differential rate varying in proportion to the benefits accruing from the construction and operation of the line, and was uncertain as to its incidence. It was impossible to say how much of the rate was imposed on the various parts of the land constituting the whole district, or on the owners of the various parts. The rate was also defective because it was imposed on frontages not appearing in the plan or the description book on the relevant date, namely, the date of the creation of the district. The rate included amounts not authorized by the Act, and was made without a real and bona fide inquiry by the Council into objections that were put before it (*Moorabbin Shire* v. *Abbott* (1); *Dunn* v. *Shire of Braybrook* (2)). The Council should have decided that the area constituting the railway rate district would be materially enhanced in value, and the plan must be a plan of land as to which the Council has formed the opinion that it would be materially enhanced in value. The provisions of the Act are mandatory, and not merely directory (*Wirral Rural Council* v. *Carter* (3); *Bristol Corporation* v. *Sinnott* (4)). There is evidence that frontagers and lessees have been omitted, and therefore the scheme did not comply with the requirements of the Act. If there has been no properly constituted railway

(1) (1914) 17 C.L.R. 549, at pp. 557-559.

(2) (1928) V.L.R. 454.

(3) (1903) 1 K.B. 646, at p. 649.

(4) (1918) 1 Ch. 62, at p. 71.

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rate district, there can be no estoppel in favour of the Council under sec. 31 (6) of the Act of 1920.

[STARKE J. referred to *City of Malvern* v. *Batchelder* (1).]

*Wilbur Ham* K.C. and *Eager*, for the respondent. The Act contemplated a series of rates being struck, and the mere fact that the railway ceased to exist did not prevent the rate being struck, because there were no differential benefits conferred on various parcels of land. It is a necessary implication that the building of a railway enhances the value of all the land within a certain district, and Parliament leaves to the Council power to fix that district. When that is done the lands are taken to be materially enhanced in value. It was competent for the Council to strike a rate at the time they did so, and in fact if they had not done so they would have been guilty of a dereliction of duty. The resolution purporting to alter the rate district is illegal and void, as the Council had the duty of fixing it, and could not adopt the one fixed by the engineer, and by so doing delegate the decision to him. Sec. 31 (6) of the 1920 Act prevents any ratepayer from objecting to the assessment if he has not availed himself of the provisions of the Act (*Mayor &c. of Derby* v. *Grudgings* (2); *Midland Railway Co.* v. *Watton* (3)). *Sandringham Corporation* v. *Rayment* (4) and *Moorabbin Shire* v. *Abbott* (5) are different from the present case. In the latter case the Court simply held that the serving of the statutory notice upon persons liable to contribute was a condition precedent to the Council's power to make such persons liable to contribute. Sec. 31 (6) relating to estoppel should be given its natural and appropriate meaning, and there is nothing in the cases which prevents that being done. [Counsel referred to *City of Malvern* v. *Batchelder* (6).]

*Hudson*, in reply. No notice was sent to any occupier that he would be estopped by sec. 31 (6) if he did not oppose the rate. *Moorabbin Shire* v. *Abbott* (5) covers this case.

*Cur. adv. vult.*

(1) (1931) 45 C.L.R. 573, at p. 586.
(2) (1894) 2 Q.B. 496, at pp. 508, 510.
(3) (1886) 17 Q.B.D. 30, at pp. 40, 41.
(4) (1928) 40 C.L.R. 510.
(5) (1914) 17 C.L.R. 549.
(6) (1931) 45 C.L.R., at p. 586.

The following written judgments were delivered :—

STARKE J. This is an appeal from a judgment of the Supreme Court of Victoria dismissing an action wherein the appellant sought a declaration that certain resolutions of the municipality of Sandringham purporting to have been made under the *Black Rock to Beaumaris Electric Street Railway Acts* (1920 No. 3110, 1923 No. 3324, 1928 No. 3627) were *ultra vires*, and ancillary relief. Under these acts, the Council of the municipality is authorized to borrow money upon the credit of the municipality, and on the security of a street railway rate. For the purpose of meeting any such obligation the Council may make and levy and recover from the owners of all lands within the boundaries of the street railway district a rate to be called the Black Rock to Beaumaris Street Railway Rate. Before proceeding to make and levy the street railway rate, the Council, through its officer, is required to prepare plans and descriptions of all lands which in its opinion would be materially enhanced in value by the construction and operation of the line. It must give notice that these plans and descriptions have been prepared and are open to inspection, and parties interested may object to any land being included in the street railway rate district, or to any matters included in the plans and descriptions. After objectors have been heard, and such plans and descriptions have been submitted to and approved by the Council, the plans and descriptions shall be sealed, and such approval and sealing shall be published in the *Government Gazette* and in some local newspaper, with an announcement that such plans show the boundaries of the area of the street railway rate district within which the lands are, for the purposes of the Act, taken to be materially enhanced in value.

It is contended that the railway rate district was not constituted in accordance with these provisions, or if it were, that the resolutions so constituting the district were rescinded by the Council. A plan and a detailed description of the lands enhanced in value by the construction and operation of the line were prepared, notice was given that they were open to inspection, and objectors were heard. Finally the plan and description were approved and sealed by the Council, and about November 1927 the Council published an announcement of the fact of approval and sealing, and that the plan

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showed the boundaries of the area comprising the street railway rate district within which the lands were, for the purpose of Act No. 3110, taken to be materially enhanced in value. So far, the constitution of the railway rate district appears to me, as it did to the learned trial Judge, to have been quite regular, despite some pencil alterations in the description book, which were the subject of some comment both before the learned trial Judge and before this Court. The only arguable objection to the constitution of the railway rate district arises from a resolution of the Council in September of 1929 purporting to rescind all previous resolutions prescribing the railway rate district, and to constitute a new area "identical with the description of all lands which in the opinion of the Chief Engineer of Railway Construction" would be "materially enhanced in value by the construction and operation of the line as per plan submitted to the Council." The *Local Government Acts* of 1915 and 1928 (sec. 185) both confer power upon, or recognize power in, a municipal council to revoke or alter its resolutions. But the learned Judge held that after the Council had approved and sealed the plan and descriptions and published its approval, the railway rate district was thereby constituted by force of the statute itself, and any subsequent resolution of the Council purporting to rescind what it had formally resolved in the matter was altogether void and of no effect. In this I agree. When the rate district was constituted, the resolution constituting it was incapable of recall (cf. *R.* v. *Howes*; *Ex parte Knight* (1)).

Next it was contended that, assuming that the rate district was properly constituted, the rate made by the Council was bad. Under the Acts, the rate is levied on only such lands within the boundaries of the street railway rate district as are ratable under the *Local Government Acts*. It must be a differential rate, at per lineal foot of frontage of the several lands to any street or road, levied in respect of all lands shown in the street railway rate district plan or plans, and the rate per lineal foot shall vary accordingly to the advantage or benefit accruing to such lands severally from the construction and operation of the line. The Council is required to estimate the total amount of money required to meet its obligations under the

(1) (1874) 5 A.J.R. 107.

Acts, and to ascertain the total lineal frontage of the several lands included in the street railway rate district. Before proceeding to make any such rate, the Council must serve on every person intended to be made liable to the rate notice in writing, setting forth, among other matters, the amount of such person's liability thereunder. Any person affected by the rate may appear before the Council, and object to the rate or to any matter included therein. If no person objects, or after hearing objections, if any, the Council, if it appears expedient so to do, may adopt the rate; but there is power in the Council to make variations in the proposed rate. Upon the adoption of the rate every person upon whom notice has been served, and whose name is included in the rate as adopted, shall be considered as having admitted that the Council has complied with all the requirements of the Act, and also his liability to the rate as set out therein, and be finally bound and concluded by all the matters aforesaid. Estimates were prepared of the total amount of money required by the Council to meet its obligations, and of the total lineal frontage of the several lands included in the rate district. The Town Clerk of the municipality also submitted to the Council a differential rate varying according to the advantage or benefit accruing to such lands severally from the construction and operation of the line. On the 23rd June 1932 the Council resolved "that the amount of money required for the purposes of the Black Rock to Beaumaris Street Railway Rate as shown in the estimate approved by the Council . . . be distributed over the total lineal feet of frontage of the land ratable to the said rate in four several areas which in the opinion of the Council vary according to the advantage or benefit accruing to the land in each area from the construction and operation of the said street railway which areas are defined and set out in the plan of the said Street Railway District marked for identification with the letter 'A,' and thereon marked 1, 2, 3, and 4, and the differential rate per foot payable in each of the said areas shall be as set out hereunder:—

| Area. | Rate per Lineal Foot. | Total Amount. |
|---|---|---|
| No. 1 | 3s. 6½d. | £3,120 |
| 2 | 2s. 8½d | £12,350 |
| 3 | 1s. 10½d. | £4,550 |
| 4 | 1s. 0½d. | £1,250." |

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A further resolution was passed " that the Town Clerk prepare a Rate Book showing particulars of the various owners liable to contribute to the Black Rock to Beaumaris Street Railway Rate, the particulars of the allotment of land in respect of which the said rate is levied, the lineal feet frontage thereof and the lineal rates per foot applicable to the various areas fixed by the Council and the total amount proposed to be levied in respect of each property." This book was prepared. The Council resolved to issue notices to the persons intended to be made liable to the rate, which should fix a date for the hearing of objections. Notices were issued accordingly, and objectors were heard. On 10th November 1932 the Council adopted the estimates already mentioned, and also carried the following resolution : " That the Council having considered the estimate of the amount proposed to be raised by the Black Rock to Beaumaris Street Railway Rate pursuant to the provisions of the Black Rock to Beaumaris Electric Street Railway Acts and the liability of the several persons in respect thereof and intended to be made liable in respect thereof and having heard objections raised by and/or on behalf of certain of such persons do hereby adopt the Black Rock to Beaumaris Street Railway Rate as set out in a resolution of the Council duly passed on the 23rd June 1932 and recorded in the minutes of the Council of such date which said rate the Council doth hereby make and levy under the said Acts upon the owners of all lands within the boundaries of the Street Railway Rate District the plans and descriptions of which lands have been approved and sealed by the Council and have been open for inspection at the Municipal Offices of the Council pursuant to the said Acts and further that the said rate shall be payable by ten (10) equal annual instalments the first of such annual instalments to become due and payable on the 25th November 1932 and all subsequent instalments on the same day and month in each successive year and that the rate collector for the time being be authorized to duly demand and levy the said rate."

This resolution was published in a local newspaper, but not, I think, in the *Government Gazette*. The provisions of sec. 30 (15) of Act No. 3110 cannot, therefore, be applied to the case. The railway

was constructed pursuant to the Act, and was opened in October 1926, but it ceased to operate in October 1931.

Many objections were taken to the rate, but only two appear to me to require consideration. The line had been closed and was no longer in operation when the resolution purporting to make the rate was passed. It was contended that the making of a rate under the Acts depended upon the continuance in operation of the railway; if the railway were not operating, then no advantage or benefit was accruing to the lands the subject of the rate from the construction and operation of the line. The argument is plausible, but not convincing. The rate is to meet the obligations under sec. 30 of Act No. 3110, and the power to make it is not conditioned expressly or impliedly upon the continuance in operation of the line. Moreover, the argument is untenable in the face of the provisions of sec. 30, sub-secs. 7 and 10.

The other argument is that the resolution of the Council purporting to make the rate does not define or state with reasonable certainty the lands rated, the differential rate imposed in respect of the several lands rated, or the persons intended to be made liable by the rate. The plan referred to in the Council's resolution sufficiently defines the railway rate district. But the areas in respect of which the differential rate is imposed cause some difficulty. There is a statement on the plan as follows :—

" Black Rock : Tramway Rate Area.

1st—Tramline.

2nd—$\frac{1}{4}$ mile radius.

3rd—$\frac{1}{4}$–$\frac{1}{2}$ mile radius.

4th—$\frac{1}{2}$ mile–remainder of area."

And on the plan there are figures—1, 2, 3, and 4—and the arcs of circles purporting to mark out the areas. It is plain that near Bolton Street, Wattle Avenue, and the western portion of the rate district, these circles or zones are disregarded, and the area in which such lands are situated is determined by reference to their proximity to the tramline, and not by measurement from the centre of any of the circles. The learned trial Judge thought the plan sufficiently defined the areas, and those whose duty it was to prepare the rate books found it clear enough for their purposes. I do not dissent

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from this view, though the delimitation of the areas is not as precise as is desirable.

The objection that the rate does not disclose the persons included therein or their respective liabilities remains for consideration. The Act contemplates that the names of the persons liable for the rate shall appear therein, and their respective liabilities. Thus sec. 31 contains the following expressions: "their respective liabilities as appearing in the rate" (sub-sec. 2); "as if his name had been originally included in such rate" (sub-sec. 5); "whose name is included in the rate as adopted" (sub-sec. 6). But what is the rate? The Council on 23rd June 1932 directed the Town Clerk, as already mentioned, to prepare a rate book, and, as before stated, rate books were prepared in accordance with this direction. But this direction does not make or levy a rate. That is found in the resolution of the Council of 10th November 1932, coupled with the resolution of 23rd June. They contain no reference to the rate books, but the rate is imposed "upon the owners of all lands within the boundaries of the Street Railway Rate District, the plans and descriptions of which lands have been approved and sealed by the Council, and have been open for inspection at the municipal offices of the Council pursuant to the said Acts." The rate books cannot, I think, therefore, be referred to for the purpose of giving certainty to the rate. We are thrown back upon the plans and descriptions of the land originally prepared by the Council. It appears to me that the names of the persons liable for the rate appear therein, and also their respective liabilities, if the plan of the rate district and areas—the description book, as it is called—setting forth full particulars of the owners, and the lineal feet frontage of their lands referred to in the resolutions of the Council, be combined, read and construed together with those resolutions. The estimated amount of each person's liability is not specifically stated, but it can be calculated from the differential rate imposed by the resolutions and the documents referred to or incorporated in the resolutions. It was in fact stated in the notice given to owners intended to be made liable for the rate. I cannot, however, commend this method of making a rate; it is wanting in precision, and may cause obscurities fatal to the rate.

The other objections pressed by the learned counsel for the appellant were all, I think, untenable in themselves, or cured by the provisions of sec. 31 (6) of Act No. 3110.

In my judgment, the appeal should be dismissed.

DIXON J. The appellant company, which is the owner of land in the City of Sandringham, instituted an action against the municipality claiming declarations of right and consequential relief against the imposition of a street railway rate which the municipality had purported to levy under the provisions of the *Black Rock to Beaumaris Electric Street Railway Acts* 1920, 1924 and 1928 (Nos. 3110, 3324 and 3627). The appellant alleged that the attempt to impose a rate was invalid. This allegation was supported upon a great number of grounds, some going to the substance of the power to impose a rate, and others going merely to formal defects of procedure. The appeal is from the decision of *Mann* J., who upheld the validity of the rate and dismissed the action.

The statutes, under which the Council proceeded, authorized the construction of an electric street railway of a little over two miles in length upon a defined route within the municipal limits. The street railway, which is a continuation of that authorized by Act No. 2556, was intended to be operated by the Victorian Railways Commissioners, but the cost of certain alterations in and improvements to the streets in which the street railway was to be laid, was thrown upon the municipality. The money borrowed to meet this cost was to be repaid by means of a street railway rate which the Council was empowered by secs. 30 and 31 of Act No. 3110, as amended by sec. 2 of Act No. 3627, to levy upon the owners of land which, in its opinion, would be materially enhanced in value by the construction and operation of the line. The line was constructed and handed over to the Railways Commissioners, who operated it for five years; but, in October 1931, its operation was discontinued by them. Although the municipality had commenced in 1923 to take steps towards the imposition of a street railway rate, no rate was actually struck until 10th November 1932. The question arises whether, at that date, an essential condition of the power to impose a rate, namely the operation of the street railway, had not failed.

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The statutory provisions which authorize the rate undoubtedly assume that the line will be constructed and will continue to operate. The first step towards levying a rate is prescribed by sec. 30 (7), which requires the Council to " cause plans and descriptions to be prepared of all lands which in its opinion will be materially enhanced in value by the construction and operation of the line." When the plans have been finally approved and sealed they are required to be gazetted with an announcement that they show the boundaries of the area which shall be the street railway rate district within which the lands are, for the purposes of the section, taken to be materially enhanced in value (sec. 31 (10) ). The Council may then make and levy upon and recover from the owners of all lands within the boundaries of the street railway rate district a rate to be called the Black Rock to Beaumaris Street Railway Rate (sec. 30 (2) ). Such rate shall vary in proportion to the advantage or benefits appearing to accrue to the several lands in the said district by the construction and operation of the said line as the Council determines (sec. 30 (3) (*b*) ). The total sum to be raised shall be equitably distributed over the total lineal feet of frontage of the ratable lands, in such a way that the amount apportioned to each lineal foot shall vary according to the advantage or benefit accruing to the said lands severally from the construction and operation of the line (sec. 30 (13) ). The proceedings of the Council for the determination of the railway rate district were complete before the line closed, but the appellant contends that, as the line was no longer in operation, the basis had disappeared upon which the statute intended that liability to the rate and the ascertainment of its amount should depend. This contention, in my opinion, raises only a question of the interpretation of the statutory provisions. Does the assumption which the language of the statute undoubtedly makes that the line will be in operation imply an intention that if this assumption prove incorrect, no rate shall be imposed ? In dealing with this question it is not without importance to notice that no express power is conferred upon the Railways Commissioners to close such a line. It does not follow that they had no authority to do so. But the absence of any explicit provision may explain why Parliament expressed itself upon the assumption that the operation of the line

would continue. In my opinion that assumption does not involve a legislative intention that the power to impose the rate should be conditional upon the assumption proving to be correct in point of fact. The purpose of the rate is to raise money to recoup expenditure from borrowed money. The rate may be a security upon which the money is borrowed. The construction of the line and its operation for some period must confer an advantage on lands, which may be sufficient to enable the Council to ascertain the district and distribute the burden of the rate. Closing the line, therefore, does not render it impossible to fulfil the statutory requirements, and the primary purpose of the rate being to recover money spent, the intention ought not to be inferred of making liability to the rate conditional upon the continued operation of the line.

The manner in which the Council proceeded in determining the district and afterwards in striking the rate has given rise to many grounds on which the validity of the rate has been impugned. Having resolved upon an area on 14th July 1927 as a street railway rate district, and a plan having been prepared and sealed and, on 2nd November, the approval and sealing of the plans and of the descriptions having been notified in the *Gazette*, the Council unfortunately resolved two years later, namely, on 26th September 1929, nevertheless, to rescind its previous resolutions, and to adopt an area identical with that which in the meantime the Chief Engineer of Railway Construction had adopted for the purpose of a betterment rate under the powers conferred upon him by sec. 7 of Act No. 3324. The boundaries of this area differed in some minor particulars from those already adopted by the Council. A new plan was prepared, sealed and, on 30th September 1930, notified in the *Gazette*. The Council appear, however, to have been advised that the rescission of their previous resolutions was beyond their powers, and they accordingly in their subsequent proceedings abandoned the revised plan of the district and reverted to the earlier plan. The appellant denies the correctness of this advice, and maintains that the earlier plan, which in the result the Council followed, ceased to define the district, the boundaries of which were fixed by the later plan which the Council did not follow. The question thus raised depends upon the language of sub-sec. 10 of sec. 30, which directs what the Council

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shall do after it has heard objections by owners, lessees and occupiers of lands within the proposed street railway rate district. The sub-section is as follows: "When such plans and descriptions have been submitted to and approved by the Council after all such objectors have been heard or have been given an opportunity of being heard by the Council such plans and descriptions shall be sealed and such approval and sealing together with an announcement that such plans show the boundaries of the area which shall be the street railway rate district within which the lands are for the purposes of this section taken to be materially enhanced in value shall be published once in the *Government Gazette* and once in some newspaper circulating in the municipal district."

On the whole, I have come to the conclusion that when the Council has exercised the power given by this provision and completed that exercise by advertisement in the *Gazette* and a newspaper, it cannot revoke what it has so done. The ordinary power of revoking resolutions is inapplicable to the settlement of an area by the solemnities prescribed by the sub-section. The sealing of the plan authenticates it as a public document fixing the inchoate liabilities of landowners, and the publication in the *Gazette* and the newspaper constitutes its promulgation. I therefore think the Council was right in treating the rescission as abortive.

For the purpose of distributing the total amount of the rate over the lands contained in the district according to their frontage in such a way that the amount per foot apportioned should vary with the advantage or benefit accruing to the lands from the street railway, the Council divided the area into four zones. This was done by plotting lines upon the plan, the scale of which was small —10 chains to an inch. Inspection of the plan suggests that three points on the route of the street railway had been taken as centres from which to draw a series of concentric arcs as boundaries to the three outer zones, the first zone being the route of the line. Written on the plan were the words: "1st Tramline: 2nd $\frac{1}{4}$ mile radius: 3rd $\frac{1}{4}$-$\frac{1}{2}$ mile radius: 4th $\frac{1}{2}$ mile to remainder of area" Along the route of the line the figure "I" was written at intervals, between that and the first plotted line—the figure 2; between the first plotted line and the second—the figure 3; and on the remainder of

the area—the figure 4. The resolution for the rate adopted different rates per lineal foot for what were described as areas Nos. 1, 2, 3 and 4. It is objected that no sufficient information is given to ascertain with certainty the amount for which some of the lands in the district are rated. Owing to the scale of the plan, it may not be possible to fix with precision exactly where on the ground the dividing line between the zones runs. Probably, if a surveyor took points lying midway between the rails which he ascertained by reference to the arcs shown on the plan, and then measured from these points the distances of one-quarter or one-half mile specified, he would fix the precise boundaries of the zones, and apply them to the ratable lands. But on a consideration of the whole of the material upon which the Council relied in making the rate, I have come to the conclusion that the plan ought not to be treated as the sole means of ascertaining how the liability falls. In striking the rate, the Council proceeded by steps. On 23rd June 1932 the Town Clerk was directed to ascertain the total lineal frontage of the district. The Council approved of estimates of the money required for which the rate was to be levied, and resolved that the amount should be distributed over the total lineal feet of frontage of the land ratable in four several areas varying, in its opinion, according to the advantage from the line accruing to the land in each area, which areas it defined and set out in the plan, and marked 1, 2, 3 and 4. The Council then directed the Town Clerk to prepare a rate book showing particulars of the various owners liable to contribute to the rate, the particulars of the allotments of land in respect of which the rate was to be levied, the lineal feet frontage thereof, the lineal rates per foot applicable to the various areas and the total amount proposed to be levied in respect of each property. The work was performed under the direction of the Town Clerk with great exactness. On 26th August 1932 he reported that the rate books had been completed, and submitted a draft copy of the necessary notices and recommended that a day be fixed for hearing objections. His recommendation was adopted, and precise notices were then sent out to each ratepayer specifying the allotment of land, its frontage and the estimated amount of the liability thereon. The objections were heard on 10th November 1932, when the

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Council adopted "the rate as set out in a resolution of the Council duly passed on 23rd June 1932." The resolution adopting it then proceeded further to describe the rate. The resolution of 23rd June 1932 had directed the preparation of the rate books, and these were the source of the notices to the objectors who had just been heard, and were obviously the basis of the whole proceedings. In my opinion they form part of the "rate" which the Council adopted, i.e., they are part of the material adopted by the Council as the expression of the liability which it intended thereby to impose. In this view the suggested difficulty disappears. Moreover, it allows sec. 31 (6) to have full operation. That sub-section provides: "Upon such adoption every person upon whom notice has been served and whose name is included in the rate as adopted shall be considered as having admitted that the council has complied with all the requirements of this Act and also his liability to the rate as set out therein and be finally bound and concluded by all the matters aforesaid." The "names" of all persons sought to be made liable are included in the rate books and therefore "in the rate," and the liability of each of them to the rate is "set out therein" with particularity, including the exact amount. It is objected, however, that there was no proper "adoption" of the rate, because the Council did not, within the meaning of sub-sec. 4 (*b*), inquire into and consider the matter of the objections before adopting the rate. In fact they heard counsel on behalf of some of the objectors, and had placed before them written objections from others. The city solicitor was present, and they inquired of him whether he still thought that resolutions he had prepared in advance should be passed. On his answering in the affirmative, they adopted the rate. In my opinion this was a sufficient inquiry into and consideration of the objections, which were either entirely legal in character and submitted by counsel, or else of a vague and unsubstantial order. I therefore think sub-sec. 6 of sec. 31 applies. In my opinion it operates to preclude all the remaining objections which were made to the validity of the rate. Some of these objections related to the proceedings for the determination of the street railway rate district. They did not, however, go to power, but to procedure only, and I think that they are covered by sec. 31 (6), because upon a

consideration of sub-secs. 2 (as amended) to 15 of sec. 30 I think it appears that the determination of the district is no more than a step in the imposition of the one and only rate which the amended section authorizes.

For these reasons I think the appeal should be dismissed with costs.

The Chief Justice agrees in this judgment.

EVATT J. I have read and agree with the judgment of my brother *Dixon*.

*Appeal dismissed with costs.*

Solicitor for the appellant, *K. McL. Emmerson.*

Solicitors for the respondent, *Farmer & Ramsay.*

H. D. W.