

hereby direct that the dates on which the instalments of the said rate shall respectively be made payable shall be, as to the first equal instalment, the 1st day of May, 1884; as to the second equal instalment, the 1st day of August, 1884. As witness my hand, at Wellington, this 4th day of March, 1884.—EDWIN MITCHELSON, Minister for Public Works."

4. That, in pursuance of such direction, your petitioner duly made and levied a rate of 3s. 4d. in the pound upon the rateable values of the rateable property situated in the Waimea Plains Railway District, that amount in the pound being requisite to produce the sum of £4,746 11s. 3d. in the said direction mentioned.

5. That a demand for the said rate was duly made upon all persons liable for payment thereof in accordance with the provisions of "The Rating Act, 1882," but only fourteen of the persons liable would pay the same or any part thereof, and only £7 11s. 8d. in all has been paid on account of the said rate.

6. That Edward Brennan, one of the persons so liable for payment of the said rate, refused to pay the first instalment thereof, payable on the 1st day of May, 1884; and your petitioner, therefore, caused a summons to be issued against him, out of the Resident Magistrate's Court at Dunedin, for recovery of the amount of such instalment.

7. That the said summons came on for hearing in due course before the Resident Magistrate of the said Court, who gave judgment in favour of your petitioner for the amount claimed.

8. That the defendant appealed against the said judgment to the Supreme Court of New Zealand, Otago and Southland District; and the said Court, having heard argument, took time to consider its decision; and on the 24th day of June last past gave judgment, allowing the said appeal, and holding the said rate to be wholly bad.

9. That the following is a copy of such judgment: "In this case two classes of objections were taken by the appellant—one relating only to the right to maintain the present action against the appellant; but the other raising the question of the validity of the entire rate levied by the respondents. As to the latter question, since the proceedings are taken under the provisions of 'The Rating Act, 1882,' the appellant, by the 27th section of that Act, can only rely on the invalidity of the rate as a whole, on the ground that the rate is a greater amount in the pound than the respondents were empowered to levy. Now, the power given to the respondents is to levy a rate for the purpose of raising a particular sum of money, that is to say, they are authorized to levy a rate of so much in the pound as may be necessary for raising this particular sum. If, therefore, they levy a rate in order to raise a larger sum than they are authorized to raise, the rate so levied must necessarily be for a greater amount in the pound than the respondents are authorized to levy. This is the plain and natural construction of the 27th section, when read in conjunction with the powers vested in the respondents. It is the more important that this construction should be adopted, because here the persons rated have no voice in fixing the amount of the rate, nor any appeal from it when fixed. That the levying a greater rate than is authorized would invalidate the rate is practically admitted by the 27th section; and the case of *Richter v. Hughes*, 2 B. and C., 499, shows beyond doubt that, where a definite amount is authorized to be levied by rate, the levying a larger amount will render the whole rate bad. Have, then, the company levied a rate for the purpose of raising a larger sum than they are authorized to raise? Now, by 'The District Railways Act, 1878,' the company proposing to construct a railway had, by the 11th section of the Act, to deposit with the Council of each county within which lands proposed to be rated were situate a statement containing divers particulars, and, amongst others, an estimate of the cost of the proposed railway and of its equipment. A vote of the ratepayers was then taken; and if a majority, representing more than one-half of the rateable property, consented to the construction of the proposed railway the Governor might declare his approval. In that case the company were entitled to a guarantee of 7 per cent. per annum on the cost, 5 per cent. to be raised by rate, and 2 per cent. to be paid out of the Consolidated Fund. By the original Act of 1877 the cost of the railway, if in dispute, was to be determined by a Commissioner appointed by the Governor. By the Amendment Act of 1878, the 22nd section, it was however provided that a certificate in the form in the Schedule, under the hand of the Minister for Public Works, should conclusively fix the cost or value of the railway for the purposes of the guarantee of the interest on cost. By the 37th section of the same Act it was also provided that, for the purpose of deciding the amount of guaranteed interest to be paid on any district railway, the cost of such railway should in no case exceed the estimate of the cost of the proposed railway and of the equipment thereof, transmitted by the company under the provisions of the 11th section of 'The District Railways Act, 1877.' Plainly, these two sections must be read together. The certificate of the Minister is only conclusive so long as it does not exceed the amount of the estimate. It would require very strong language indeed to compel the Court to hold as conclusive a certificate given by the Minister in contravention of the law, as clearly stated in the 37th section, and which, if upheld, would have the effect of benefiting a private company at the expense not only of the local ratepayer but also of the consolidated revenue. It is, moreover, clearly just, as the ratepayer consents to be taxed on the basis of a given estimate, that he should not be liable to be taxed on a different and higher basis. Now, the case on appeal was stated by the parties, and sets out what was proved. It does not appear from the case that there was any dispute as to the material facts. It was proved that the estimate of the cost for the purposes of section 11 of the Act of 1877 was £101,000. The total amount, therefore, for which a rate could be levied in the extreme case of the receipts being insufficient to pay for the cost of maintenance and working expenses would be 5 per cent. on that amount, or £5,050. An instrument under the hand of Mr. Mitchelson, the then Minister for Public Works, was produced at the hearing before the Magistrate, and is set out in the case. It recites that the company had applied to the Minister for power to raise part of the guaranteed interest for the year ending the 31st day of March, 1883, by means of a