but whether persons so entrusted can be appointed by a quorum of their colleagues. But, lastly, the supposed analogy appears to be quite mistaken. An argument founded upon the principles of equity in regard to trusts of property is surely out of place in a case of this nature. The only precedents at all in point are those relating to municipal appointments. Section forty-seven of the Ordinance makes it clear that there is no general objection to the appointment by the Board of its own members to offices in its gift. It may be argued that this section impliedly permits such appointments to any *unpaid* office.

The only argument against the appointment in which I can see the least weight, is that the functions of Boardman and Assessor are incompatible. According to the analogy of the English cases on corporate offices this objection would not vitiate the appointment to the assessorship, but would vacate the seat of the Boardman who accepted the appointment. *Millward v. Thatcher*, 2 Term Reports, 81; *The King v. William Pateman*, ib. 777. The result as to the validity of the assessment might, however, as pointed out by Mr. Justice Chapman, be the same.

I agree that under section fifteen the Board appears to possess some supervising power over the assessment; and hence it may be deduced that the public security for a just assessment is impaired by the union in one and the same individual of the powers of assessor and member of the Board. Looking, however, to the doubtful nature of this control over assessment which the Board possesses, and to the terms of section forty-seven, this ground does not appear to me very sure, and I prefer to base my judgment on the other grounds of objection rather than upon this one.

Chapman, J.—This is an appeal to the Supreme Court at Wellington, and referred by the learned Judge, with the consent of the parties, to this court. The facts have been already stated by Mr. Justice Johnston. It has been contended on behalf of the Appellant (the defendant in the Court below), that he ought to have had judgment on two distinct grounds, either of which was sufficient to invalidate the rate imposed by the Board of Works at Blenheim. These grounds are:—(1.) That the nominal plaintiff, the Clerk of the said Board, had no *locus standi* to sue at all, inasmuch as the forty-sixth section of the local Act under which the rate was made, is *ultra vires*, as affecting or altering the practice of the Supreme Court—one of the subjects of legislation forbidden to Provincial Councils by the nineteenth section of the Constitution Act: (2.) Assuming that the forty-sixth section is not *ultra vires*, that then the rate itself is invalid inasmuch as the instruction of the local Legislature has been violated by the improper mode of appointing the assessors under the fourteenth section of the local Act.

Assuming for the present the validity of the local Act, I propose to consider the second ground of appeal first. The fourteenth section of the local Act authorizes the Board "from time to time "by warrant under their hands or the hands of any three of them to appoint one or more fit person or "persons to be assessor or assessors to assess all lands, &c." In pursuance of this authority, the Board appointed two of their own members to be assessors, for the purpose of making a valuation of lands liable to the rate. It is contended that, by appointing some of themselves assessors, the Board has not effectually exercised the authority conferred upon them, and, therefore, that the rate founded on the valuation of the assessors so appointed is bad. This view I think correct, though it is not without reluctance that I have arrived at a conclusion which must disturb the arrangements of the Blenheim Board of Works. All authority, whether given by a Statute or by a private person, must be strictly pursued. In order to determine whether this has or has not been done in the case before us, we must ascertain the intention of the local Legislature from the language which it has employed. Taking the common use of language, I think it must be obvious, that where a body of men is empowered to elect or appoint another body of men, with functions differing from but ancillary to its own, the Legislature could not have intended that they should or contemplated that they would appoint some of themselves. It seems to me, that if the local Legislature had so intended, some such words as "shall elect or appoint out of their own body one or more assessor or assessors, &c." would have been employed. That such enabling words have not been used, seems to me to afford a presumption—and by no means a weak one—that such was not the intention of the local Legislature. When we look at the functions of the two bodies, that is the distinct acts which each has to perform, I think that the presumption is greatly strengthened, or rather is converted into certainty. It is the Board of Works which is empowered to make the rate, and they do so upon a valuation to be made by the assessors; and it seems to me that the ratepayers are deprived of an important security intended by the Legislature, if the valuing body is identical with the rate-making body, instead of being distinct, independent, and indifferent. The two functions are distinct, though the one be preliminary to the other, and that distinctness is inseparable from the intention of the Legislature, and if it be lost by making the two bodies coalesce, that intention is defeated. It is, indeed, the fact of the same individuals continuing to exercise both functions, and not the mere circumstance of the appointment which seems to me to constitute the fatal vice of the proceeding. In England, if one of the members of a Municipal Corporation be chosen to fill an incompatible office, the election is not void, but his seat as a member is vacated. If that had been done here, I am not aware that the appointment itself could have been deemed invalid; but the assessor has continued to act as a member of the Board, and that, I think, vitiates the act of the Board. I do not say that the appointment was invalid. We are not called upon to decide that; it is no part of the case. What we are required to determine is, the act of a body constituted as described, that is the rate.

As this disposes of the case in favour of the Appellant, it is unnecessary to go into the other principal ground of appeal; but as it has been raised and very fully argued, I will not abstain from expressing my views on the subject. I am inclined to think that the objection cannot be supported. I think the forty-sixth section is divisible. The first portion is as follows:—"The said Board may "sue and be sued in the name of their Clerk or of any member of the Board for the time being." I see no alteration or invasion of the practice of the Supreme Court in this. The local Legislature furnishes to the Court a plaintiff whom it can accept in accordance with its practice; and therefore the enactment so far is not *ultra vires*. But in all that follows, the practice of the Court is altered and invaded at every point; yet that portion of the forty-sixth section does not come into question in the