case before us. In the only part of the section which does come into question in this Act, namely, the place of Mr. Bagge on the record, I think there is no violation of the Constitution Act. It has been suggested by one of my learned brothers, that the two parts of the forty-sixth sections cannot be separated, because the first part does not give the Court a plaintiff absolutely and unconditionally, but only a plaintiff clogged with the incidents and conditions named in the latter part of the section. I was at first much impressed with this view, but on a very careful reading of the sections, I recur to my original opinion, namely, that the early part of the section is divisible from the latter portion, and is not *ultra vires*. I think that Acts of the Provincial Legislatures should be sustained by the Courts, unless they are clearly repugnant to the nineteenth section of the Constitution Act, and that they should never be pronounced invalid to a greater extent than is necessary to eliminate the vicious portion.

MOORE, J.—This is an appeal from the District Court of Marlborough, holden at Picton, to the Supreme Court at Wellington, and, by consent of the parties, ordered to be heard before this Court.

After the judgments which have been given, it is unnecessary to state again the facts of the case.

The questions for the opinion of the Court are:—

1. Is the appointment of two of the members of the Board as assessors a valid exercise of the power of appointment under this Act?
2. Is "The Blenheim Improvement Act, 1864," repugnant to an Act passed in the fifteenth and sixteenth years of the reign of Her Majesty, intituled "An Act to grant a Representative Constitution to the Colony of New Zealand;" if so, is the Blenheim Improvement Act void?
3. If the said Act is not void, is the assessment as amended by the Justices, or Court of Appeal, a valid and legal assessment as against the defendants?

If the case is to be treated as one of the execution of a power, or analogous thereto, then I think, upon every principle upon which, according to my understanding of the matter, the Court acts in such cases, the appointment referred to in the first question is not a valid exercise of the power of appointment under the Act. If the case is to be treated rather as one of the performance of a trust, or as analogous thereto, than of the execution of a power, then also, I think, upon every principle upon which the Court, according to my understanding of the matter, acts in such cases, the appointment in question was not a due performance of the trust. If, again, the case is to be treated as one in which interest and duty conflict, or may conflict, then also I think the appointment in question cannot be supported. To cite authorities for these things would be simply to transcribe so much of the treatises on powers and the law of trusts, respectively, as relates to these matters.

If, however, the case is not to be treated as a case of the execution of a power, nor as a case of the performance of a trust, nor as a case in which interest and duty conflict, or may conflict, but rather as a case of construction—simply construction—that is, of the sections of the Blenheim Act in question bearing upon the subject matter of appeal, then, I take it, the question is, what was the intention of the framers of the sections in question? Now, the intention is in all cases to be gathered from the language—the words in which the intention is expressed. I need not repeat the sections here. But if the intention of those who framed these sections had been that the Board itself should or might assess, what could have been easier than to have said so? If, again, the intention had been that the Board itself should or might assess, or, in the alternative, should or might appoint assessors, what could have been easier than to have said so? If, once more, the intention had been that the Board should or might appoint themselves, or any two or more of themselves, as assessors, nothing could have been easier, apparently, than to have said so; however absurd, or, if not absurd, at least unnecessary, such a proceeding may appear. None of these things, however, is said; on the contrary, language is used in the fifteenth section to express the intention of the users, which, as I read it, clearly shows their intention to have been that the Board and the assessors should be different and distinct persons, with distinct and separate functions. I therefore think that the first question must be answered in the negative. This makes it unnecessary for the decision of the case to give an answer to the second question. And I confess to not having considered it so as that I must be held bound on any future occasion on which it may arise and be necessary to the decision of the case to give an answer to it by such answer as I give now, which is, that, as it seems upon the authorities, that such an enactment as the forty-sixth section of the Blenheim Act is divisible, the Act is not repugnant to the Constitution Act; though I am not to be understood as saying that, but for such divisibility, it would be so repugnant. The third question must necessarily, if the first be answered in the negative, be also so answered; and the appeal, I think, should be allowed, with costs.

Appeal allowed; and judgment of the District Court reversed; with costs.