obligations attached to them; but I doubt whether the obligations were such as could be subjects of proceedings in a Court of Equity. Perhaps the Board might be liable to a *mandamus*, directing it to appoint assessors, if it neglected to do so; but can it be suggested that proceedings could be taken against the Board as trustees, for a breach of trust in choosing unfit assessors, or for the undue execution of the power of appointing? With regard to the execution by the assessors of their power and trust, it is provided that the incorrectness or irregularity of the assessment is to be the subject of an appeal to which the assessors are not to be the respondent parties, but in which the Board are to pay the costs to successful Appellants.

I was a good deal impressed by the argument arising from the use of the word "satisfaction" in the fifteenth section of the Act; for it does seem at first inconsistent that the Board which is to be satisfied with the assessment should be composed in part of persons with whose action they are to be satisfied; but the inconsistency, I think, would not arise if, as occurs in the present case, there was a majority of three, who could, if dissatisfied, refuse to act upon the assessment of the other two. Moreover, the satisfaction of the Board is not conclusive as to the correctness of the assessment. The assessment is in fact only suggestive, as a basis of the rate, till the time for inspection appeal and amendment has passed.

This kind of appointment may be more or less inconvenient and improper, as the offices of boardman and assessor may be more or less incompatible with each other, under certain circumstances; but it does not follow that it is necessarily invalid: and it is conceded that there is no doubt it would have been competent for the Legislature, if it had chosen, to give the power to the Board to appoint some of its members to the office.

With regard to the question of interpretation of the actual words of the fourteenth section, in the absence of any improbability that the majority of the Board should have power to appoint one or more of its members to do the work of assessors, either on the score of public policy or from a consideration of the context, I confess I do not see any reason why they should be taken to exclude it, if they are capable of including it: and it seems to me that they are.

And now, lastly, I am by no means satisfied that, even if the appointment of the assessors was in this respect irregular, it necessarily follows that the rate would be bad. The assessors do not make the rate; their assessment is open to correction at the instance of any person aggrieved by it; and if not altered on appeal, it may be presumed to be a fair and just one; and if so, it can be a matter of little importance by whom the assessment was made.

But with regard to both the points arising on this part of the case, respecting which I differ from the majority of the Court, I wish to be understood as speaking with some diffidence; and I am glad I am not obliged to base my judgment in favour of the Appellant on them or either of them.

On the whole, then, having come to the conclusion, for the reasons I have stated, that the assessment as amended by the Justices, and the rate were not binding on the Appellant, because the Act assuming to give the Court of Appeal power to alter and amend the assessment was substantially *ultra vires* in respect of matters essential to the validity of the rate and its enforcement, I am of opinion that this appeal must be allowed, and the judgment of the District Court reversed with costs.

GRESSON, J.—In this case three questions have been reserved for the consideration of the Court.

First.—Whether the appointment of the Blenheim Board of Works of two of its members as assessors is a valid exercise of the powers of appointment vested in the Board by "The Blenheim Improvement Act, 1864"?

Secondly.—Whether the Act is repugnant to the New Zealand Constitution Act?

Thirdly.—If the Act be not void, whether the assessment as amended by the Justices is a valid and legal assessment against the Appellant?

I propose to consider the second question first.

In order to determine whether or not the Blenheim Act is *ultra vires*, we must consider its provisions in connexion with the New Zealand Constitution Act as modified by "The Provincial Councils Powers Act, 1856," which latter Act, although not referred to in this case, must, for the determination of this question, be considered as forming part of it.

The Constitution Act prohibits Provincial Councils from making laws for the establishment of any Court of Civil or Criminal Jurisdiction, except Courts for trying such offences as by the law of New Zealand are or may be made punishable in a summary way, and from altering the constitution, jurisdiction, or practice of any such Court as aforesaid.

I think that the sixteenth section purports to establish a Court of Civil Jurisdiction. It designates the tribunal, which it specifies as a Court of Appeal, and we are bound to give to the language used its ordinary construction, unless we gather from the Act itself that it was not the intention of the Legislature so to use it; and I do not find anything in the Act from which it can be inferred that the terms used are not to be understood in their ordinary sense.

The only civil jurisdiction exercised by Justices of the Peace sitting as a Court is that which they derive from the Resident Magistrates' Courts Ordinance; and it is restricted to claims of debt or damage not exceeding £20, and obviously falls very far short of such questions as the Court constituted by the Blenheim Act might have to determine, involving, amongst others, questions of title to land, from the taking cognizance of which the Justices are expressly prohibited by "The Resident Magistrates' Courts Amendment Ordinance, 1856."

"The Provincial Councils Powers Act, 1856," empowers Provincial Councils to make laws for altering the civil jurisdiction of Courts of Summary Procedure having jurisdiction in the Province in all suits or proceedings where the debt or damage claimed shall not exceed £20.

If it be contended that the Blenheim Act does not constitute a new Court, but only gives to one already constituted an altered jurisdiction, such as is authorized by the last-mentioned Act, I answer that such a construction assumes that the Provincial Councils Powers Act enables Provincial Legislatures to enlarge indefinitely the jurisdiction of Justices of the Peace, a construction that is quite inconsistent with the provisions of "The Resident Magistrates' Courts Amendment Act,