

prohibitions of the nineteenth section of the Constitution Act. The case is not like one of those in which English Statutes give appeals to the already constituted Court of Quarter Sessions; and it seems to me that this is as much a new Court as if it had not been provided that the members of it should be Justices of the Peace.

Having thus disposed of the first two branches of the principal question, I have now to consider the third, namely, whether the Blenheim Act is or is not *ultra vires*, on account of its having attempted, by section forty-six, to alter the practice of Courts which Provincial Councils have no power to interfere with, in violation of the prohibition contained in the second subsection of the nineteenth section of the Constitution Act. Now, the forty-sixth section of the local Act, which professes to provide for the mode in which the Board is to sue and be sued, is not by its terms confined to proceedings in Courts such as the local Legislatures can deal with, but must apply equally to these and to Resident Magistrates' Courts having the extended jurisdiction above £20, to District Courts, and to the Supreme Court.

The section in question provides (though in a clumsy way), first, for a nominal plaintiff or defendant to represent the Board in legal and equitable proceedings; secondly, for the non-abatement or the continuance of the suit, on the death or removal of such nominal party; and, thirdly, for the exoneration of such party or any member of the Board from payment of costs or payment of moneys in respect of any official acts or contracts, out of their private estates. I may mention in passing that I have failed to find any provisions in the Act whereby parties to actions or suits who succeed against the Board, are to obtain execution for costs or damages. But it may be asked, whether it can be contended that the power of suing and being sued in the name of a nominal or official party, and the personal immunity of such party or of the Board, are matters only of the practice of the Courts in which such proceedings are taken. Are they not substantial rights given to the Board for the benefit of the public, and not mere rules of practice in particular Courts? To this I would reply that it seems to me they are, indeed, something beyond mere rules of practice, but also, that they do affect the practice of the Courts above alluded to. With respect to the provision that on the death or removal of the nominal plaintiff or defendant (the clerk or a member of the Board), the suit shall not abate or be discontinued, but such clerk for the time being, or any member (!) shall always be deemed to be plaintiff or defendant, it seems pretty clear that this is a matter of practice. But it may, perhaps, be urged that at all events as regards the Supreme Court, there is no material alteration of the practice, but that the practice enacted is in consonance with the rules (see Supreme Court *Reg. Gen.* 381 and 382) which provide for the substitution of legal representatives after the death of parties, by suggestions on the record; but the answer is that the Blenheim Act does not require a suggestion to be entered, and provides that the clerk for the time being or any member shall be the party; and this clearly seems an alteration in the practice of the Supreme Court. And the same may be said respecting the practice of the District Court. I do not myself see how these provisions in this section of the local Act can be dis severed, and one portion established as valid while another is rejected as being *ultra vires*. The mode of suing and being sued is the matter dealt with in the section, and if the Provincial Legislature in dealing with that has gone beyond its powers in any respect, it seems to me that the whole enactment respecting it is invalid. If that be so, the Appellant must succeed even if the rate was imposed by virtue of enactments not beyond the powers of the Council.

Now, to conclude with respect to this part of the case. If the opinion at which I have arrived, namely, that the provisions for appeal to the Court of Appeal mentioned in the Blenheim Act, are, for both or either of the reasons I have mentioned, beyond the powers of the Provincial Legislature, it seems clear that the rate (which, and not the assessment, creates the charge,) is null and void; and that it cannot be argued with any propriety that the provisions for making and recovering it can be valid, notwithstanding that the prescribed mode of altering and amending the assessment on which it is based, is *ultra vires*, and that the mode of recovery is by means of a practice which the Provincial Legislature had no power to establish.

The power to appeal against the assessment is the only security given by the Act to the inhabitants against an unjust charge; and the Provincial Council evidently did not mean to make them pay a rate until they had had an opportunity of disputing the correctness of the assessment. For these reasons, I am of opinion that the assessment and rate were invalid; and that, at all events, the rate could not be recovered under the powers of the forty-sixth section.

I come now to the second main question of importance in the case, namely, whether the rate or the assessment is void in consequence of the appointment by three members of the Board, of the two other members, to be assessors under the fourteenth section.

A majority of the Judges are of opinion that this mode of appointment invalidated the assessment and rate; but, without going very minutely into this part of the case, I feel bound to state that after having given my best attention to the arguments, and that respectful consideration which is due to the expressed opinions of my brothers Gresson, J., Chapman, J., and Moore, J., I am unable to come to the conclusion at which they have arrived; and that now, as at the hearing of the case, I am by no means satisfied that the appointment was bad, or, at all events, that it was more than an irregularity which did not affect the validity of the assessment or rate. I am not satisfied that the Board had any power granted to them, or any trust vested in them, such as come within the doctrines and practice of Courts of Equity, which some of my learned brethren consider applicable to the case; or that the appointment of assessors was "an execution of a power" or of a "trust" which would subject the Board to the equitable jurisdiction of this Court.

It seems to me that the provision of the Act on this subject merely authorizes the Board to employ, under a warrant, persons whom they may think fit and qualified to perform the work of assessing, that is, describing and valuing the property to be rated, for the purpose of levying the rates, and that too, not conclusively, but subject to investigation and correction by a tribunal having judicial powers.

I think there was no estate or interest in any property vested in the Board, with which they dealt in appointing the assessors; and the assessors got no power over any estate or interest in any property by the appointment. The power and duty of the Board to elect fit persons to assess, and the power and duty of the assessors to make the assessment were, no doubt, powers and duties with moral