issue in the terms in which the first issue has been granted by the Lord Ordinary against any person, namely—"Whether said letters . . . falsely and calumniously represent that although the pursuer was tried for an offence within the meaning of the Act 13 and 14 Vict. c. 92 . . . and acquitted, the charge was nevertheless well founded." That issue may mean one of two things, either that the evidence was such as to warrant a prosecution, or that it was such as to warrant a conviction. The first view I have already considered. A party charged with instituting a malicious and rash prosecution is entitled to lay before the public a true statement of the facts which came to his knowledge, and on which he informed the fiscal. If the meaning is that the verdict was wrong, and that the evidence should have been followed by a conviction, I see no reason why the defenders should not make such a statement. It is not uncommon after a trial, both in private conversation and in the press, to find opinions expressed as to the soundness of the verdict, and such expressions of opinion are never thought to be libels on the accused. What is the meaning of the Courts being open if the proceedings are not to be watched and criticised. If it is a libel to say that the judgment of a jury is wrong, it must equally be a libel to say that the decision of a judge is wrong, and our legal journals in pointing out that decision as inconsistent with the previous law render themselves open to actions for libel. I do not think there is anything calumnious in expressing an opinion for or against the opinion of a judge or jury.

LORD PRESIDENT—I concur entirely in holding that no issue should be granted, on the ground that there is no relevant averment of libel, and I think therefore the defenders' first plea should be sustained and the action dismissed.

With regard to the question on which Lord Shand has expressed an opinion, whether the issues should proceed on an allegation of malice, and whether malice should be put in issue, I desire to give no opinion, because I think that question does not arise in the present case. We are holding the case irrelevant, and therefore it is impossible to frame any issue at all. If the record were relevant it would be a different case—how far different I cannot conjecture.

LORD SHAND—In my view, in considering the relevancy of a case like this, the first point which the pursuer has to consider is whether he is bound to put the case as one of malice, and accordingly it enters into my judgment in this case to consider whether the pursuer was bound to make an allegation of malice in order to succeed in his case.

The Court recalled the interlocutor of the Lord Ordinary and dismissed the action as irrelevant.

Counsel for the Pursuer—Comrie Thomson—Shaw—Wilson. Agent—P. Morison, S.S.C.

Counsel for the Defenders — Graham Murray—C. S. Dickson. Agents- Traquair, Dickson, & Maclaren, W.S.

HOUSE OF LORDS.

Monday, May 12.

(Before the Lord Chancellor (Halsbury), Lords Watson, Bramwell, and Herschell.)

MUIRHEAD AND OTHERS *v.* MUIRHEAD AND OTHERS.

(*Ante*, December 23, 1887, vol. xxv., p. 204, and 15 R. 254.)

Succession—Will—Construction—Widow Renouncing Provisions—Acceleration of Provisions to Children—Period of Vesting.

A truster directed his trustees to pay to his wife if she survived him an annuity, and to give her the liferent of a house, and "to draw the revenue of all my estate not above disposed of during the life of my said wife, and to accumulate the revenue, after paying my wife's said annuity, with the principal." He then provided that "as soon after the death of my said wife as convenient" certain heritable subjects should be conveyed to three of his children, and that the residue should be divided equally among his children, declaring that if any of them should predecease the term of payment without leaving issue, their provisions should lapse and become part of the residue, unless the predeceasing child left issue, in which case such issue should succeed to the parent's share. The widow repudiated her testamentary provisions and obtained her legal rights.

Held, on a construction of the deed (*rev.* judgment of the Second Division), that the provisions to the children of the specific heritable subjects and residue would not vest until the death of the testator's widow.

This case is reported *ante*, December 23, 1887, vol. xxv., p. 204, and 15 R. p. 254.

The claimants Charles Muirhead and Agnes Muirhead or Christie and their children appealed.

At delivering judgment—

THE LORD CHANCELLOR—My Lords, I have had an opportunity of reading in print the opinion which is about to be delivered by my noble and learned friend Lord Watson, and I can only say that I entirely concur in it, adding as my only contribution to the judgment that it seems to me to disentangle the case from the difficulties which surround it, and to give a strict but true construction to the document. On the other hand, the construction put upon it by the Court below seems to me to offend against two very familiar rules for construing instruments, inasmuch as it puts into the instrument words which are not there, and by putting those words into it robs of their proper meaning words which are there.

LORD WATSON—My Lords, the decision

of this appeal appears to me to be entirely dependent upon the construction of the testamentary settlement in the form of a deed of trust executed by Charles Muirhead, who died on the 23rd May 1865, leaving a widow, and two sons and two daughters born of their marriage.

In order to render intelligible the observations which I have to make, it is necessary to notice the general scheme of the testator with respect to the distribution of the estate, heritable and moveable, which he conveyed to his trustees. By the first and second purposes of the trust, the deceased directed his trustees, after providing for debts and expenses, to pay to his widow a free annuity of £100, to be increased to £250 in the event of her making over her separate estate to the trustees, and so bringing it within the operation of his deed, and also to give her the liferent occupancy of a dwelling-house. By the third purpose he directs his business, with the goodwill and stock-in-trade, to be made over to his son Charles and his daughter Agnes in equal shares; and by the fourth purpose the trustees are directed "to draw the revenue of all my estate not above disposed of during the life of my said wife, and to accumulate the revenue, after paying my wife's said annuity, with the principal."

The provisions in favour of children with which we are chiefly concerned in this case are contained in the following purposes of the trust. By the 5th, 6th, and 7th of these the trustees are directed "as soon after the death of my said wife as convenient," to dispose and convey certain heritable subjects to each of his children, Agnes, Jessie, and Charles. By the 8th they are directed to realise the residue of his means and estate remaining after fulfilment of the foregoing purposes, and to invest the sum of £1000 on heritable security in their own names, the interest being payable as an alimentary provision to his son James during his life, and the fee divisible amongst his children on his decease. By the 9th and last purpose they are directed to divide the balance of residue, after the investment of £1000 for James and his issue, into four equal shares, and to pay one of these to each of his children with the exception of James, whose fourth share is directed to be settled upon him in liferent allenarly, and upon his children and their heirs in fee.

The 9th purpose is followed by two declarations expressive of the truster's will. The first of them provides that advances made by him to a child during his lifetime shall be counted as part of the residue, and shall be deducted from the share of such child. The second, which is of material importance in the present case, is in these terms, "and if any of my children predecease the term of payment of their provisions under this deed, the said provisions shall lapse and become part of the residue of my estate, unless in the event of the predeceasing child or children leaving lawful issue, in which case such lawful issue shall succeed equally among them to the provisions their parent would have received had that parent survived the term of payment foresaid; and in the event of the predeceasing child dying without lawful issue, and that child's provision becoming part of the residue of my estate, my said trustees are directed to divide the residue into as many shares as I have children surviving the said term of payment, or children who though dead have left lawful issue, and to pay over, divide, and invest the same in the proportion of one share to each surviving child, and one share to the children of each deceasing child who has left lawful issue."

After her husband's death, the widow, who is still alive, elected to take her legal rights of terce and *jus relictae*, instead of her provisions under the settlement; so that her annuity, which was made a first charge on the income of the trust, never became payable.

One of the children, Jessie, died without issue in 1866, when any interest which she might have in the trust-estate was transmitted by deed to her husband James Crellin, and has now passed to his representatives. The other children are still in life, two of them, Charles and Agnes, having issue, whilst James is still unmarried.

The administration of the trust has for many years been carried on by a judicial factor, who has accumulated the revenue from year to year in accordance with the directions of the fourth purpose. The provisions of the Thellusson Act apply to accumulations of revenue after the 23rd May 1886, being twenty-one years from the death of the testator.

In September 1886 the action of multiplepoinding in which this appeal is taken was raised by James Muirhead, in name of the judicial factor, in order to have the *corpus* of the trust-estate distributed among the beneficiaries according to their several interests. A formal defence was lodged by the factor to the effect that the period for distribution had not yet arrived. On the various parties interested compearing as claimants, James, and the representatives of Mr Crellin, as in right of the deceased Jessie Muirhead, insisted for immediate division, whilst Charles and Agnes and their children maintained that there could be no division in terms of the trust-deed until the death of the truster's widow.

The Lord Ordinary (the late Lord Fraser) sustained the action on the ground that the provisions in favour of children and their issue vested on the lapse of twenty-one years from the testator's death, when the direction to accumulate became inoperative. The Second Division of the Court varied his judgment by finding "that the right to the provisions made by the truster Charles Muirhead in his trust-disposition and settlement vested in the beneficiaries on his death." The only effect of the variation upon the rights of parties was to give a vested interest to the deceased Jessie Muirhead or Crellin, which had been excluded by the finding of the Lord Ordinary. The respondents' counsel did not argue that the Thellusson Act in putting a stop to accumulations after the 23rd May 1886

could possibly affect either the time of vesting of the fee or the period of distribution appointed by the testator in his deed. Such a proposition is plainly untenable, nor did they argue that if the widow had accepted her conventional provisions, and had been in the regular receipt of her annuity from the trust, there could have been any division of the *corpus* until her death. But they did maintain that the necessary effect of her renunciation was to accelerate the time of distribution, and also to accelerate the vesting of the fee.

I see no reason to doubt that, in cases where the final distribution of a trust-estate is directed to be made on the death of an annuitant, and it clearly appears that in postponing the time of division the testator had no other object in view than to secure payment of the annuity, it may be within the power of the Court, upon the discharge or renunciation of the annuitant's right to ordain an immediate division. But in order to the due exercise of that power it is in my opinion essential that the beneficiaries to whom the trustees are directed to pay or convey shall have a vested and indefeasible interest in the provisions. That principle appears to me to be just in itself, and to be firmly established by *Robertson* v. *Davidson*, 9 D. 152; *Rainsford* v. *Maxwell*, 14 D. 450, and *Pretty* v. *Newbigging*, 16 D. 667. I cannot conceive that it should be in the power of any Court to give the testator's estate to persons other than those whom he has appointed to take. It may also be that, in the circumstances supposed, the Court would be justified in directing distribution, although no beneficial interest had vested, if application were made to that effect by the entire class of persons to whom, or to one or more of whom, the beneficial interest must eventually belong but no such case is presented in this appeal.

It appears to me that, apart from other considerations, an insuperable bar to the respondents' demand for present distribution is to be found in the fact that the testator has given a positive direction that accumulations of revenue shall be continued until the death of his widow. They endeavour to meet that obvious difficulty by arguing that the accumulation was intended to secure his widow's annuity, and was not meant to serve any other purpose; but the direction is express and unqualified, and neither the context of the deed nor the circumstances of the trust lend probability to the argument. In none of the authorities relied on by the respondents did a similar specialty occur, except in *Lucas Trustees* v. *The Lucas Trust*, 8 R. 502, which was decided by the Second Division in 1881. In that case the trustee, in the event which occurred, of his predeceasing his wife without leaving issue of his body, directed his trustees to pay an annuity of £200 to his widow and also to give her the liferent of a house, and after satisfying these purposes to accumulate the surplus income during her lifetime. In the same event he directed them, on the decease of his wife, and after providing for payment of certain legacies and an annuity of £100 to a brother-in-law, to make over the residue to persons named by him, as trustees of a charitable fund, to be called the Lucas Trust. The widow repudiated the trust and claimed and got her legal rights. In these circumstances, upon a special case submitted by the trustees of the will and of the Lucas Trust, the Court found that the former were not bound to retain the residue and accumulate the balance of income until the widow's death, and that the latter were entitled to an immediate conveyance of the residue subject to existing and contingent interests. The case differs from the present in this important respect, that the trustees of the charity, and they alone, were entitled to the estate and its accumulations, so that the transfer to them could not prejudice the interest of any beneficiary. But it was the plainly expressed intention of the testator that the residue increased by accumulations until his widow's decease, and no lesser amount, should be employed in launching his charitable scheme, and I entertain a doubt whether the Court was justified in giving the estate to the administrators of the Lucas Trust without imposing upon them the duty of accumulation as directed by the truster.

Had the testator's widow not repudiated the provisions made for her in his settlement, I think it is not doubtful that the vesting of the fee would have been suspended until her decease. There are three considerations, the concurrence of which, in my opinion, necessarily leads to that conclusion—(1) the bequests to children and their issue are not conceived in the form of a separate gift with a subsequent direction as to the time of payment, but are, for the first time, implied in the direction to pay on their mother's death; (2) there is a gift over to their respective issue in the event of any of the testator's children predeceasing that date; and (3) there is a clause of survivorship, which in the event of any child and his or her issue failing before the widow's death, gives their provisions to surviving children of the testator and the issue of predecessors equally among them *per stirpes*.

That such would have been the import and effect of the deed if the course of trust administration had not been disturbed by the widow betaking herself to her legal rights, was hardly contested by the respondents. They based their claim upon the fact of the widow's repudiation of the settlement, and maintained that its legal effect was to substitute the time of the testator's death for that of his widow's decease with respect to the vesting and distribution of his estate, and they relied upon *Annandale* v. *Macniven*, 9 D. 1201, as establishing that proposition.

It is, in my opinion, impossible to ascertain except by inference or speculation the grounds of decision in *Annandale* v. *Macniven*, owing to the brevity of the judgments as reported. The facts of the case were, that a testator gave his widow a liferent of the trust-estate, to be restricted to an annuity of £50 on her re-marriage, the fee

to be assigned to his lawful children or their issue on the death or second marriage of their mother. Failing children and their issue the trustees were directed on the death of the widow to make over the estate to the testator's brothers and sisters equally among them, subject to a declaration that in the event of any of them dying before their shares became payable, such shares should accrue to the survivors or to the issue of the persons dying, if any. On the death of the truster the widow successfully claimed her legal rights, and thereafter re-married. The truster was survived by one child, a daughter, who died in minority before her mother's second marriage. Shortly after that marriage immediate division of the residue was claimed by the brothers and sisters of the truster under the ultimate destination, and their claim was sustained by the Court. The next-of-kin of the daughter also claimed the whole residue on the footing that she took a vested interest under the trust-deed *a morte testatoris*, and they alternatively claimed her legitim, not under but as against the trust. The Court gave effect to their alternative claim. It is clear that the decision did not go upon the ground that the widow's repudiation occasioned vesting *a morte*, as the learned Judges have held in the present case, because in that event the whole estate would necessarily have vested in the testator's daughter on her survivance of him, and would have passed to her legal heirs. I am strongly impressed with the belief that in *Annandale* v. *Macniven* the Court must have proceeded on the theory that notwithstanding the difference of expression in the two cases the testator really intended that the event upon which the ultimate fiars were to take should be the same as that upon which vesting in the persons first instituted was made to depend, viz., the death or second marriage of his widow. I am at a loss on any other theory to conjecture at what *punctum temporis* they held that a beneficial interest in the fee became vested.

Counsel for the respondents argued strenuously that the present case fell within the principle of *Annandale* v. *Macniven;* but when pressed by some of your Lordships to explain what that principle was they were unable to give a satisfactory or definite answer. In the Court below the Lord Justice-Clerk (Moncreiff), referring to the period of vesting which was fixed by the Lord Ordinary on the authority of *Annandale's* case, said (15 R. 258)—"I have come to be of opinion that that is not the true operation of the principle, but that if the repudiation is to be equivalent to the death of the widow, in the sense of the will, that principle must have its full effect, and that the provisions must be held to have vested *a morte testatoris*."

The same rule was suggested by Lord Jeffrey in *Robertson* v. *Davidson*, who there said (9 D. 162)—"Does not that act of renunciation, whilst it frees the fee from the burden of the liferent, at the same time vest that fee on the supposition that it was not vested before?" But the principle thus suggested was rejected in that case by the Lord President (Boyle), who differed, and it was not accepted either by Lord Mackenzie or by Lord Fullerton, who agreed in result with Lord Jeffrey, the members of the Court being the same who seven months afterwards gave a unanimous judgment in *Annandale* v. *Macniven*. The next enunciation of the principle which I have been able to trace is in Lord Murray's judgment in *Pretty* v. *Newbigging*, 16 D. 682, in which his Lordship states that in the case of *Annandale* "the Court held that all were entitled to an immediate division in the same manner as if the liferent had been extinguished by the widow's death." I have already pointed out that if that be taken as a correct representation of what was decided in *Annandale's* case the Court plainly erred in the application of the principle and awarded the estate to the wrong persons. But it is in my opinion a hopeless endeavour to extract a general and ruling principle from a case which was decided on special and exceptional grounds. According to the report in the Jurist (19 Scot. Jur. 530) the Lord President at the close of the case made the significant announcement—"I wish it to be understood that our judgment proceeds entirely upon the terms of this particular deed."

In my opinion it is impossible to hold as matter of principle that the act of any person outside of and hostile to the trust can *per se* effect an alteration of the truster's dispositions with regard to the vesting of interests in his estate. Such an act may be of material importance if the testator has either expressly or by implication signified his intention that upon its occurrence the period of vesting shall shift. But in this case I am unable to discover within the four corners of the trust-deed any indication whatever that its maker intended, in the event of his wife repudiating (which is the same thing as renouncing) its provisions, to appoint the period of vesting to be other than that expressly directed by him in the case of her approbation, viz., the time of her decease.

The ingenious arguments of the respondents' counsel on this point appeared to me to go no further than to suggest that if the testator had anticipated the action which his wife took after his death he might possibly have made a different arrangement in regard to the time for the fee becoming vested.

The respondents made a separate point upon the terms of the second declaration, to the effect that the words "payment of their provisions under this deed" could not apply to the heritable subjects destined in the fifth, sixth, and seventh purposes of the deed. The result would be to exempt the destinations of these subjects, which are to individuals named, from the conditions of gift over and survivorship introduced by the second declaration, and to make the right to the subjects vest at the testator's decease.

It is unnecessary to say more upon the point than this, that it is concluded against the respondents by the judgment of the House in *Buchanan* v. *Angus*, 4 Macq. 474.

For these reasons I am of opinion that the beneficial fee of the specific heritable subjects and residue which the Court below have ordered to be divided now will not vest until the death of the testator's widow, and that the fiars cannot be ascertained until that event takes place. I think this is a proper case for allowing the costs of the litigation to come out of the trust estate, and I therefore move that the interlocutors appealed from be reversed, except in so far as they relate to the expenses of process incurred by the parties in the Court below, and that the cause be remitted, with instructions to sustain the action of multiplepoinding in so far as it relates to accumulations of trust income accruing after the 23rd May 1886, and *quoad ultra* to dismiss the same.

Lord Bramwell—My Lords, I understand from the opinion just expressed by my noble and learned friend, and indeed from the arguments on both sides, that the decision of this case does not depend on any peculiarity of Scotch law, but is "entirely dependent upon the construction of the testamentary instrument executed by Charles Muirhead," the rules for which are the same in Scotland as in England. That being so, I have no difficulty in saying that in my opinion the judgment must be reversed.

What the Court of Session has done is to read the instrument as though it contained these words—"If my wife elects to take her legal rights of terce and *jus relictæ*, then I direct that instead of as soon after the death of my wife as convenient, they do, as soon after my death as convenient, divide the residue into four equal parts, and pay one part to each of my children Agnes, Jessie, and Charles, and that there be no accumulation." Now, an addition to, or abstraction from, or alteration of a written instrument ought never to be made without almost a necessity for so doing—never except to avoid some absurdity or repugnance. Is there any such necessity here? Certainly not. The way to test that is to see whether there would be any difficulty in reading into the will the negative of what the Court of Session has read in it. Thus—"And though my wife should elect to take her legal rights of terce and *jus relictæ*, still I direct that the property shall accumulate and not be divisible till her death, and then to those as I have directed." This is what he does say when he makes the provision he has made with no qualification.

I can understand that when the person to take at one time is fixed at an earlier time, and there is no possibility of anyone else being entitled, and nothing to be done in the interim, the fund or property may be handed over at the earlier time. I should have thought, but subject to the remark as to the accumulation of the fund, of my noble and learned friend Lord Watson, that *Lucas' Trustees* v. *The Lucas Trust* was an example. There the trust was inevitably to take. Nothing was to be done or happen meanwhile but the accumulating of the fund. This could be caused by the trust as well as by the truster's trustees, or if they at once used the trust funds without accumulation there would be no one to complain. Perhaps that might be done in England without the intervention of a court of law on that ground, viz., that no one could complain. Perhaps the accumulation ought to go on for the appointed time. Perhaps that might be compelled.

I am of opinion that the judgment should be reversed.

Lord Herschell—My Lords, the majority of the learned Judges in the Court of Session appear to have felt themselves with some reluctance constrained to arrive at the decision under appeal by the pressure of prior authorities. If I thought that the case was governed by a consistent series of decisions I should hesitate to disturb them, even though they might be open to review in your Lordships' House. But it appears to me clear that the construction of the particular trust-disposition must be determined before it can be ascertained whether the decisions relied on are applicable to it.

The Lord Justice-Clerk, who delivered the leading judgment, states the principle thus —"Where provisions are made for a wife, and the term of payment of the children's provisions is postponed till her death, her repudiation of these provisions and betaking herself to her legal rights will operate as her death if the postponement is substantially intended solely for the benefit of the wife." It is obvious therefore that the first question to be answered is, whether upon the true construction of the instrument we have to consider, the postponement of the vesting was "substantially intended solely for the benefit of the wife."

The testator directed all the revenue of his estate not disposed of during the life of his wife to be accumulated, and bearing this in mind, and looking at all the terms of the disposition, I can find nothing to justify the conclusion that the postponement was intended solely for her benefit. I am, indeed, led to the contrary conclusion.

The only case cited in which it was held that the repudiation of the wife warranted an immediate distribution, when there was a similar trust to accumulate, is that of *Lucas' Trustees* v. *The Lucas Trust*. No reasons were assigned by the learned Judges who decided that case, and I have some difficulty in understanding how they arrived at the conclusion to which they gave effect. I should have thought that the testator intended that the endowment to be handed over to the charity should be increased by the accumulation which he directed. But however that may be, I do not think the judgment in *Lucas'* case can be held to govern that now before your Lordships if the construction which I put upon Mr Muirhead's disposition be the correct one.

These considerations appear to me to be sufficient to dispose of the present appeal.

But I must not be understood as expressing any dissent from the opinion of my noble and learned friend Lord Watson, that the act of a person outside of and hostile to the trust cannot *per se* effect an alteration of the truster's dispositions with respect to the vesting of interests in his estate. I agree with him in thinking that there is no indication in the trust-deed that the testator intended in the event of his wife repudiating its provisions to appoint the period of vesting to be other than that expressly directed. And it would certainly be strange if in the absence of such indication the act of a third person could thus affect the position and unequivocal directions contained in the instrument.

On the subordinate question, whether, apart from the point I have already discussed, the right to the heritable subjects directed by the 5th, 6th, and 7th disposition to be specifically conveyed to certain of his children vested at the testator's decease, or whether such vesting was postponed, and the conditions of gift over and survivorship were applicable to these subjects, I have nothing to add to what has been said by Lord Watson.

Their Lordships ordered that the said interlocutors complained of in the said appeal be, and the same are hereby reversed, except in so far as they relate to the expenses of process incurred by the parties in the Court below: And it is further ordered that the cause be and the same is hereby remitted back to the Second Division of the Court of Session with instructions to sustain the action of multiplepoinding, and proceed therein in so far as it relates to accumulations of trust income accrued and to accrue after the 23rd of May 1886 to decree against the said judicial factor for payment of the capital of the estate in his hands of the foresaid expenses as and when the same may be taxed, and *quoad ultra* to dismiss the action.

Counsel for the Appellants—Sir H. Davey, Q.C.—Graham Murray. Agents—Murray, Hutchins, & Company, for E. A. & F. Hunter & Company, W.S.

Counsel for the Respondents James Muirhead & Others—Sir R. Webster, Att.-Gen. —Watt. Agents—A. Beveridge, for Robert Denholm, S.S.C.

Counsel for the Respondent J. B. Crellin —Sol.-Gen. Darling, Q.C — Rigby, Q.C. Agents—Burton, Yeates, Hart, & Burton, for Macandrew, Wright, & Murray, W.S.

COURT OF SESSION.

Saturday, June 21.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

TOLMIE *v.* PAROCHIAL BOARD OF URRAY.

Local Authority — Water Supply—Assessment—Public Health (Scotland) Act 1867 (30 *and* 31 *Vict. c.* 101), *secs.* 89 *and* 94.

The Public Health (Scotland) Act 1867, sec. 89, sub-sec. 6, provides—"It shall be lawful for the local authority to borrow for the purpose of constructing . . . such works as are herein authorised for providing a supply of water, . . . and on the security of the after-mentioned special water assessments, where such exist, and of general assessments, or either of them such sums of money . . . as the local authority shall deem necessary for that purpose, and to assign the said special water assessments, and general assessments, or either of them, in security of the money to be so borrowed." Sec. 94, sub-sec. 1, provides—"Where any special water supply district has been formed, as hereinbefore provided, the expense incurred for the water supply within the same or for the purposes thereof, and the sums necessary for payment as before mentioned of any money borrowed for water supply purposes as hereinbefore provided, shall be paid out of a special assessment which the local authority shall raise and levy on or within such special district in the same manner and with the same remedies and modes of recovery as are herein provided for the district of the local authority." Sub-sec. 2 of this section provides—"All charges and expenses incurred by the local authority in executing this Act, or any of the Acts hereby repealed, and not recovered as hereinbefore or after provided, may be defrayed out of an assessment to be levied by the local authority along with, but as a separate assessment from, any one of the assessments hereinafter mentioned in this section."

The local authority of a parish formed a district thereof into a special water supply district, and in order to repay a sum borrowed by them to pay for the cost of the works, they imposed on the special district the maximum assessment authorised by the Act. The maximum assessment proved insufficient, although it did not appear that the local authority had wilfully or knowingly incurred expenditure in excess thereof. *Held* that they were entitled to make up the deficiency by assessing the whole other lands and heritages within the parish at the rate of 4d. in the £.