pursuers; it is not said that they came under any guarantee on behalf of the company, or that they gave their personal assurance that the company would fulfil its obligations. I assume that they were the instruments or agents of the company in the commission of a breach of contract, but I fail to see how a matter which is no more than a breach of contract in a question with the principal can change its nature and become a breach of duty in a question with the company's agents.

It is unnecessary that I should elaborate this view, because I concur entirely in the reasoning of the Lord Ordinary on the question of individual responsibility, and in his Lordship's observations on the fallacy involved in the use of the expression "special appropriation" as applied to an obligation to make payments out of profits. I am of opinion that the reclaiming-note should be refused.

The LORD PRESIDENT, LORD ADAM, and LORD KINNEAR concurred.

The Court adhered.

Counsel for Pursuers and Reclaimers—Lees—Aitken. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for Defenders Raeburn & Verel and Others—H. Johnston—Graham-Stewart. Agents—Davidson & Syme, W.S.

Counsel for Defenders the Bank of Scotland — W. Campbell. Agents — Tods, Murray, & Jamieson, W.S.

Friday, November 1.

SECOND DIVISION.

SCOTT'S TRUSTEES *v.* SCOTT AND OTHERS.

Trust—Testamentary Provisions—Severing of Interests of Beneficiaries—Residue not Immediately Payable.

The trustees under a testamentary trust were directed to "retain and invest" certain sums for particular beneficiaries in liferent and other beneficiaries in fee, the fee not to be payable to the latter until they reached majority, or, in the case of females, until marriage, whichever event should happen first. Other legacies were to be paid immediately.

Parts of the residue were also to be retained and invested for behoof of liferenters and fiars, and the period when the residue could finally be distributed was necessarily remote.

Held that the trustees were not entitled to create separate trusts by appropriating investments to meet particular legacies not immediately payable, and that a loss upon an investment so appropriated fell to be made good out of the residue of the trust estate.

Robinson v. *Fraser's Trustee*, August 3, 1881, 8 R. (H.L.) 127, *distinguished.*

Trust—Liability of Trustees — Deposit-Receipt—Period of Payment—Guarantee of Indemnity.

The trustees under a testamentary trust were empowered to retain the securities upon which the trust-estate was invested at the time of the truster's death. They accordingly retained certain deposit-receipts in a foreign bank under a guarantee by two of their number indemnifying the trustees against loss which they or the trust-estate might incur by continuing to hold the deposit-receipts. The bank suspended payment before the period when the deposit-receipts became payable.

Held that neither the trustees nor their guarantors were liable to make good the loss to the residuary estate, it not appearing that the deposit-receipts could have been realised before maturity.

Question whether the terms of the guarantee would have covered a loss to the trust-estate for which the trustees were not personally liable.

Major-General James Corse Scott died on 6th March 1890, leaving a trust-disposition and settlement dated 20th March 1889, by which he conveyed to the trustees therein named his whole estate, heritable and moveable, for, *inter alia*, the following purposes:—"*Fourth*, That my trustees shall pay to my nephew Captain Alexander James Corse Scott, on the retired half-pay list of the Bengal Staff Corps, in the case of his surviving me, the sum of £5000 sterling, and shall retain and invest in their own names the sum of £5000 sterling in trust, for the liferent use allenarly of the said Captain Alexander James Corse Scott, and for the lawful issue of the body of my nephew John Scott of Sinton, in fee equally, share and share alike: *Fifth*, that my trustees shall pay to my nephew Major Edward Corse Scott, of Her Majesty's Sixth Royal Warwickshire Regiment, in the case of his surviving me, the sum of £5000 sterling, and shall retain and invest in their own names the sum of £5000 sterling in trust, for the liferent use allenarly of the said Major Edward Henry Corse Scott, and for the lawful issue of the body of my nephew, the said John Scott of Sinton in fee, equally, share and share alike: . . . *Seventh*, That my trustees shall retain and invest in their own names the sum of £10,000 sterling for the younger children of my nephew, the said John Scott of Sinton—that is, the whole lawful children of the said John Scott other than the child or heir who shall succeed, or be entitled to succeed, to the said estate of Sinton, and apply the income thereof for their behoof and maintenance, and convey and make over the capital of said sum of £10,000 to said younger children equally, share and share alike, on said children, if males, attaining the age of twenty-one years complete, and, if females, on their attaining said age or being married, whichever event shall first happen."

By the last purpose the truster directed that the residue and remainder of his estate should be divided into sixty-two

equal parts, and that his trustees should hold, pay, and apply, and convey and make over, as herein set forth, eight parts thereof for the children of his deceased nephew Major John Corse Scott (afterwards recalled and given to the lawful issue of the said John Scott of Sinton); five parts to his nephew Captain Alexander James Corse Scott; five parts to his nephew Major Edward Henry Corse Scott; twenty parts for the lawful issue of the said John Scott of Sinton; twelve parts to the said John Scott of Sinton, and his heirs succeeding him in the said estate of Sinton; five parts to Mrs Helen Wardrop, his niece, in liferent, and her children in fee; six parts for the children of the deceased George Boothby, with the exception of Mrs Louisa Bazeley, and one part for James Charles Wahab. It was further provided that the fee of none of the capital sums or shares of residue should vest in any of the beneficiaries until the said beneficiaries attained, if males, twenty-one years of age, if females twenty-one years or until they were married.

The investment clause in the said deed provided—"Also with full power to my trustees to retain the securities in and upon which the funds forming the said trust-estate are and shall be invested at the time of my decease, and to lend out and invest all or any part of my said estate in" certain securities specified, "or on the security of any of the investments before mentioned, or in or upon such other funds and securities as my trustees in their discretion shall deem fit, and from time to time to alter, change, or renew the securities as may be necessary or may seem to them expedient." It was further provided and declared that "my said trustees shall not be liable for omissions or neglect of management, nor *singuli in solidum*, but each for his own acts, receipts, and intromissions only, nor shall they be liable or accountable for any banker, factor, or other person with whom or into whose hands any of the said trust funds may come or be deposited in the execution hereof, nor for the insufficiency or deficiency of any stocks, funds, or securities in or upon which any of the trust funds may be invested in pursuance of this settlement, or that the properties, stocks, or investments which may be purchased with the funds of this trust shall realise the price or prices at which the same were purchased, or for the responsibility of the debtors, purchasers, or others with whom my trustees may transact, or for any other misfortune, loss, or damage which may happen in the execution of this trust or otherwise in relation hereto, unless the same shall happen by or through their own wilful default respectively."

By codicils dated in 1890 the truster provided certain other legacies to be invested by the trustees for the behoof of certain beneficiaries in liferent, and of other beneficiaries in fee, the fee not to be payable to the latter until they reached majority, or, in the case of females, until marriage, whichever event should happen first.

Among the trust assets at the truster's death were included about £33,000 of deposits for fixed periods in various colonial and foreign banks, whereof a sum of £9000 was deposited in three deposit-receipts for £4000, £3000, and £2000 with the English Bank of the River Plate, Limited, maturing, the first on 15th February 1893, and the last two on 11th June 1893. Under the various testamentary deeds there were left about £53,000 of legacies falling to be paid at once to the beneficiaries, and £32,000 of legacies which the trustees were directed to hold in trust for minor or other beneficiaries.

At a meeting of the trustees on 24th June 1890, the trustees, in compliance with the request of two of their number, who were also beneficiaries, John Corse Scott of Sinton and Captain Alexander James Corse Scott, resolved to realise sufficient of the trust-estate to pay the £53,000 of legacies above mentioned, and to set apart and apportion certain of the fixed deposits to meet the legacies not immediately payable. A deed of declaration of trust giving effect to this resolution was accordingly executed in Februay 1891.

This deed contained the following guarantee:—"And I, the said John Scott, now John Corse Scott, as an individual, do hereby bind and oblige myself, my heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, all jointly and severally, to warrant, free and relieve, and harmless and skaithless keep the trustees and executors of the said Major-General James Corse Scott, and their heirs, executors, and successors, of and from all loss, skaith, interest, damages, and expenses that they, or any of them, or the trust-estate of the said Major-General James Corse Scott, may sustain or incur, or may be put to in any manner of way, by continuing to hold and retain the foresaid deposit-receipts, in terms of this present declaration of trust and deed of apportionment, or of having set apart and apportioned the same for the purpose of meeting the provisions and other legacies above particularly set forth and referred to." A guarantee in similar terms was undertaken by Captain Alexander James Corse Scott.

Among the deposits thus retained and apportioned, the deposits in the English Bank of the River Plate were apportioned as follows:—(1) The deposit-receipt for £3000, and a *pro indiviso* share of the deposit-receipt for £2000, were set apart and apportioned in implement of the directions in the fourth purpose of the said trust-disposition and settlement to retain and invest £5000; (2) the deposit-receipt for £4000, together with a deposit-receipt in another bank, was set apart and apportioned in implement of the directions contained in the seventh purpose of the said deed. At the date of the meeting of trustees on 24th June 1890, and of the declaration of trust, the said English Bank of the River Plate was in good repute. After the meeting of trustees on 24th June 1890, the several legacies affected by the arrangement then agreed upon were dealt

with as separate trusts, and the income paid to the various liferenters was the net proceeds of the particular securities set apart for each individual bequest. In the month of July 1891 the English Bank of the River Plate, suspended payment, and a winding-up order was pronounced on 1st August 1891. None of the deposits made by the truster in said bank had matured when it had suspended payment. The loss on the deposits held by the trustees in the bank would, it was believed, amount to about 25 per cent.—that is to say, to about £2000.

In these circumstances questions arose as to the persons on whom the loss occasioned by the depreciation of the deposits in the English Bank of the River Plate was to fall. For the decision of this question, a special case was submitted for the opinion and judgment of the Court by (1) the trustees; (2) John Corse Scott and Captain Alexander James Corse Scott as individuals; (3) the legatees, to meet whose claims the deposit-receipts had been specifically appropriated, viz., Captain Alexander James Corse Scott and the seven children of John Corse Scott, whose ages ranged from one to thirteen years; and (4) the residuary legatees.

The questions of law were—"1. Are the beneficiaries interested as liferenters or as fiars respectively in the provisions and legacies specified in the declaration of trust and affected by the loss on the said deposits in the said English Bank of the River Plate, or either and which of them entitled to relief from such loss against (*a*) the residue of the trust-estate; (*b*) the trustees of Major-General James Corse Scott as individuals; (*c*) Mr John Corse Scott of Sinton, and Captain A. J. Corse Scott, or either of them, under the clauses of indemnity in the declaration of trust, to the extent undertaken by these parties respectively? 2. In the event of head (*a*) of question 1 being answered in the affirmative, are the trustees bound to relieve the fourth parties of the loss thus occasioned them, or are the trustees or the fourth parties entitled to recover from Mr John Corse Scott and Captain Scott, under the clauses of indemnity in the declaration of trust, and to the extent undertaken by these parties respectively, the amount by which the residue is diminished by the payment of such claims? 3. In the event of head (*b*) of question 1 or of the first alternative of question 2 being answered in the affirmative, are the trustees entitled, under the said clauses of indemnity, to be relieved from such claim by Mr John Corse Scott and Captain Scott to the extent undertaken by these parties respectively?"

On 1st June 1895 the Court appointed a tutor *ad litem* to the children of John Corse Scott, and he became one of the second parties to the case.

Argued for the trustees—The trustees were not liable to make good the loss. By the investment clause they were empowered to retain the estate invested at the date of the testator's death in the investments in which they found it—*Ritchie* v. *Ritchie's Trustees*, July 20, 1888, 15 R. 1086; *Thomson's Trustees* v. *Henderson*, October 25, 1890, 18 R. 24. They were also entitled to apportion investments for the payment of particular legacies—*Robinson* v. *Fraser's Trustee*, August 3, 1881, 8 R. (H.L.) 127. Lastly, the trustees were in any event entitled to be relieved of any loss they or the trust-estate might sustain by the second parties, in terms of the guarantee.

Argued for the second parties—The guarantee undertaken was only to indemnify the trustees for any loss they or the trust-estate might sustain. The persons indemnified were thus the trustees and not the beneficiaries under the trust, and therefore, unless the loss was one for which the trustees were personally liable, the guarantee did not apply.

Argued for third parties—(1) No doubt the trustees had a right to retain temporarily the deposit-receipts if they were covered by the words of the investment clause. But this right was subject to qualification. They could not retain a security indefinitely and without inquiry. They must keep their eyes open, so as to be able to step in and prevent loss. This was laid down in *Thomson's* case. But in the present case the trustees, by the deed of 1891, had placed themselves in such a position that they required to retain the deposit-receipts, however unsafe a security they might be shown to be. (2) The trustees had no power under the deed to apportion the investments to particular legacies. In this trust-deed there was no provision that any portion of the trust-estate should be "set apart" for particular legacies, as in the case of *Gray* v. *Gray*, June 4, 1835, 13 S. 866. The words in this case were "retain and invest." The loss must therefore fall upon the trustees, or, if it were held that they were not acting *ultra vires* in retaining the deposits, the loss must be made good out of the residue.

Argued for the fourth parties—1. The case was ruled by *Robinson's*—indeed, was *a fortiori* of it. In *Robinson's* case the leading provision was merely to pay the interest on a sum of £2000 to each of two liferentrices, and the authority to separate and appropriate the estate was only to be inferred from the subsidiary power given to the trustees "to invest the foresaid legacies of £2000 and £2000 respectively." In the present case the leading provision was that the trustees should "retain and invest, in their own names, the sum of £5000 sterling in trust." This *prima facie* pointed to the £5000 being severed from the general estate and separately invested. 2. It was not necessary that specific appropriation should be expressly directed or authorised by the truster; it was quite sufficient if it was impliedly authorised, or even if it was not prohibited, and was in accordance with reasonable trust administration. 3. Specific appropriation was here clearly to be implied, because (*a*) the trust-deed provided that the annual income of shares of residue directed to be retained and invested by the trustees for the life-

rent use of any party, should only commence to run from and after the date of such investment. But without payment or specific appropriation of investments to meet legacies it was impossible to ascertain the amount of residue, or to invest shares of it. If, therefore, the trustees could not appropriate investments towards such legacies, the provision as to payment of interest to persons liferenting shares of residue could not be carried out; (*b*) certain of the shares of residue fell to be paid at once, but, as pointed out under (*a*), this could not be done without specific appropriation. The House of Lords gave great weight to the direction to pay residue in *Robinson's* case. Assuming that the securities had been properly appropriated to specific legacies, the parties on whose behalf the securities were held must bear the risk of the fluctuations of the securities. Opinion of Lord Shand in *Teacher's Trustees* v. *Teacher*, January 10, 1890, 17 R. 313 and 314.

At advising—

LORD TRAYNER—The questions put to us for determination in this case arise out of the administration of the trust-estate of the late General Scott, and have reference more particularly to a loss which the trust-estate has sustained in the course of administration. What we are asked to determine is, by whom that loss is to be borne.

It is unnecessary to go into any detail of the circumstances under which that question has arisen, as these are fully given in the case before us. It is sufficient for the purposes of my opinion to recal one or two points which have to be kept in view. (First) Part of General Scott's estate, amounting to £9000, had been deposited by him with the English Bank of the River Plate, on deposit-receipts for fixed periods. These receipts did not mature until February and June 1893. (Second) In June 1890 the trustees resolved to realise the trust-estate so far as was required to meet the legacies bequeathed by General Scott, and which fell to be immediately paid, and to set apart and appropriate certain of the fixed deposits to meet legacies not immediately payable, but which the trustees were, by General Scott's settlement, directed in the meantime to hold. Under this resolution the deposit-receipts I have already mentioned for £9000 were, *inter alia*, "set apart and apportioned in implement" of certain legacies of the second class, that is, of legacies which the trustees were in the meantime to hold. (Third) Two of the trustees—both being beneficiaries under the settlement—guaranteed the trustees and the trust-estate against all loss arising from the retention and appropriation of those deposit-receipts in the manner just described. It does not appear that any other of the beneficiaries was either consulted as to such appropriation, or agreed thereto. (Fourth) In July 1891 the English Bank of the River Plate suspended payment and went into liquidation. Out of this failure the loss in question arose.

It appears to me that the first matter to be considered is, whether the trustees were entitled to set apart and appropriate the deposit-receipts in question as they did. In my opinion they were not. In the first place, such an act was not directed or authorised by the settlement of General Scott, and it was an act the performance of which no beneficiary had a right to claim. The direction of the truster was that the trustees should hold the estate, so far as not immediately payable, as a whole, out of which they were to pay certain benefits to certain parties. They were nowhere authorised or directed to set apart or appropriate any part of the estate for the benefit of any beneficiary. And so long as the beneficiaries received respectively the payments directed to be made to them out of the trust funds they could claim nothing more. I do not mean to indicate by what I have said any opinion to the effect that trustees may not, in many cases, in the fair administration of trust affairs, set apart a particular security or fund to meet some particular or special claim by a beneficiary, without express directions to that effect in trust-deed under which they act. The case of *Robinson* cited in the debate is an instance to the contrary. In that case appropriation of special funds to meet certain legacies was sustained, although such appropriation had not been directed to be made by the trust-deed. That such a course was intended by the truster in that case, might very reasonably be inferred, because such appropriation was necessary to enable the residue to be divided without undue delay, which was the truster's object and, indeed, direction. Except as regards the two special legacies provided for by appropriation, there was no need for continuing the trust. Here, however, having regard both to the manner in which the fee of the special legacies (in reference to which the appropriation of the deposit-receipts was made) was destined, and also the necessarily remote period at which the residue could be divided, there was no ground for inferring that the truster ever contemplated such an appropriation of trust securities as here took place. There being nothing therefore in the trust-deed authorising the appropriation, and nothing from which such authority could be inferred, and there being nothing to warrant a claim by any beneficiary to have such an appropriation made, I come to the opinion that what the trustees did in that matter was *ultra vires*. In the second place, although the trustees made the appropriation at the request of two of their number (being also beneficiaries)—a request which in some circumstances they might lawfully have complied with—yet here they were not entitled to do so, because such compliance did or might result in unduly favouring (as the Lord Chancellor observed in *Robinson's* case) one "set of legatees at the expense of the other." This is plain enough. Take the case of the fourth provision of the trust-deed by way of illustration. All that the beneficiaries were entitled to under that provision was a liferent and fee respectively of £5000. Now,

the securities here set apart could not increase in value, while their value might and did diminish. But securities might have been set apart to meet these claims which might become of greater value than £5000, in which case if the appropriation were sustained, these beneficiaries would get more than the truster bequeathed to them, and the residuary legatees would get just so much less than was intended for and bequeathed to them. In like manner, if the securities set apart and appropriated diminished in value, the special beneficiaries would get less than the truster bequeathed to them, and the residuary legatees would get what otherwise would have been taken from the residue to make up the amount of the special legacy—that is, would get more than was intended for them. Accordingly I am of opinion that the appropriation of the deposit-receipts in question was *ultra vires* of the trustees, and that the remaining questions in the case must be considered and determined on that footing.

Are the trustees personally responsible for the loss in question, is the next matter for consideration. This question I also answer in the negative. By the terms of the truster's settlement the trustees were authorised "to retain the securities in and upon which the funds forming the said trust-estate are and shall be invested at the time of" the truster's decease. Such an authority would perhaps not absolve the trustees from the duty (as was said in the case of *Thomson's Trustees*, 18 R. 24), "to look closely after these investments, and to make sure for themselves that they are reasonably safe." In the case of stocks in railways, shares in public companies, and the like, the trustees may be expected to retain such securities only so long as they, in the interest of the trust-estate, reasonably may. Such stocks and shares are saleable, and may be sold on the market at any time when the trustees think it right to do so. But the securities in question were deposit-receipts for money deposited for fixed periods, and I do not know that such securities can be realised in the market like stocks and shares. It is not said in the case before us that they could, and I never heard of such a thing being done—I assume, in the absence of any statement to the contrary, that the deposit-receipts in question were not realisable until they matured, and as this did not happen till some considerable time after the bank granting the deposit-receipts had suspended payment, it follows that the trustees could adopt no other course than to retain the receipts, and that such retention was in no sense culpable. If they were not to blame in retaining the receipts, they cannot be held liable for the loss which was sustained; a loss which, in the view I have expressed, they could not have avoided by any diligence on their part.

I come now to consider whether, as the trustees are not personally liable for the loss sustained, the two trustees at whose request the appropriation of the special securities was made are liable for it. This depends to a large extent on the terms of the guarantee which they gave. Their obligation is thus expressed—They undertake "to warrant, free, and relieve, and harmless and skaithless keep," the trustees and their successors "of and from all loss, skaith, interest, damages, and expenses that they or any of them or the trust-estate . . . may sustain, or incur or be put to in any manner of way by continuing to hold and retain the foresaid deposit-receipts . . . or of having set apart and apportioned the same for the purpose of meeting the provisions and other legacies above particularly set forth and referred to." It was argued for the second parties to this case—the guarantors—that this obligation only covered loss for which the trustees might be held personally responsible, and something no doubt may be said in support of that view. I, however, incline to the opinion that the obligation or guarantee was not of that limited character, and assume now that it covered any loss sustained by the trust-estate, although not such as the trustees would be bound personally to make good—which arose from the appropriation or retention of the deposit-receipts. Even in that view of the guarantee, I am of opinion that the second parties are not liable to make good or relieve the trust-estate of the loss in question, and that for the reason that the loss has not been occasioned by either of the causes, the consequences of which the trustees were guaranteed against. The guarantee was directed against loss sustained or incurred, either through the appropriation of the receipts or their retention. Now, it is obvious that no loss has been sustained or incurred through the mere appropriation of the deposit-receipts. They are still in the hands of the trustees, who never transferred them in any way, and their appropriation may be in future disregarded by them. The loss, on the other hand, cannot have arisen from the retention of the deposit-receipts, because, as I have pointed out, the trustees could do nothing but retain them until they matured. Before they matured, however, the bank granting the deposit-receipts failed, and the loss was thus incurred. The appropriation and retention of the receipts in no way occasioned or contributed to the loss.

I am of opinion, therefore, that the loss must fall on and be borne by the residue of the estate, and would propose to answer the questions put to us accordingly.

The LORD JUSTICE-CLERK—That is the opinion of the Court.

LORD RUTHERFURD CLARK was absent.

The Court pronounced the following interlocutor:—

"Find and declare, in answer to the first question, that the beneficiaries interested as liferenters and fiars respectively in the provisions and legacies there referred to, and affected by the loss on the deposits in the English Bank of the River Plate, are entitled to relief from such loss against the residue of

the trust-estate: And in answer to the second question therein stated, that neither the trustees nor the parties of the second part are bound to relieve the fourth parties of the said loss."

Counsel for the First Parties—Maconochie. Agents—M'Neill & Sime, W.S.

Counsel for the Second Parties—Rankine—Graham-Stewart. Agents—M'Neill & Sime, W.S.

Counsel for the Third Parties—Dundas—Clyde. Agents — R. C. Bell & J. Scott, W.S.

Counsel for the Fourth Parties—Ure—Chree. Agents—J. A. Pattullo, S.S.C.

Friday, November 8.

FIRST DIVISION.

KIRKCALDY DISTRICT COMMITTEE *v.* POLICE COMMISSIONERS OF BUCKHAVEN, &c.

Public Health—Special Water Supply District Partly in County and Partly in Burgh—Burgh Formed after 1889—*Joint-Management and Maintenance—Assessment—Local Government (Scotland) Act* 1889 (52 *and* 53 *Vict. c.* 50), *secs.* 81 *and* 99.

When a special water supply district is established in a rural parish, and a police burgh is afterwards formed within such parish, subsequently to the passing of the Local Government (Scotland) Act 1889, the police commissioners of the burgh, are, under sec. 81 of that Act, charged with the management and maintenance of the water supply and works jointly with the county local authority, and are alone entitled, as burgh local authority under sec. 99, to impose and levy within the burgh the assessments for water supply purposes.

The Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50) enacts—Sec. 81—"With respect to special drainage districts or special water supply districts the following provisions shall have effect—(1) Where a special drainage district or special water supply district has been formed in any parish under the Public Health Acts, the district committee may, subject to regulations to be from time to time made with the consent of the county council, appoint a sub-committee for the management and maintenance of the drainage or water supply works, and such sub-committee shall in part consist of persons, whether members of the district committee or not, who are resident within the special drainage district, or special water supply district. (2) Where a special drainage district or special water supply district is partly within a county and partly within a burgh or police burgh, the sub-committee appointed under the immediately preceding sub-section, and such members of the town council or police commissioners (as the case may be) of such burgh or police burgh as, failing agreement, the Secretary for Scotland may determine, having regard to all the circumstances of the case, shall be charged with the management and maintenance of the drainage or water supply works within such special district, and the determination of the Secretary for Scotland may provide for the regulation of the proceedings, and for the allocation and payment of the expenses incurred under this sub-section. (3) Where a special drainage district or special water supply district is wholly within a police burgh formed after the passing of this Act, the police commissioners of such police burgh shall become the local authority under the Public Health Acts for such special district, and the assessments in respect of the drainage and water supply shall be levied in the same manner as they were before such district was formed into a police burgh." Sec. 99—"Nothing in this Act shall interfere with the formation of police burghs under the provisions of the General Police and Improvement (Scotland) Act 1862; and on the formation of any police burgh the commissioners of police thereof shall become the local authority therein under the Public Health Acts, subject to adjustment by the sheriff in regard to the property and debts and liabilities affected by such change. . . ."

In 1868 the town or village of Buckhaven, and in 1870 the village of East Wemyss, both within the parish of Wemyss and county of Fife, were respectively formed into special water supply districts under the Public Health (Scotland) Act 1867 (sec. 89 (5). At that time the areas of these water districts were wholly landward.

In 1876 the Parochial Board of the parish of Wemyss, as local authority, obtained a Provisional Order, confirmed by Parliament, authorising the introduction of a supply of water for the whole parish. The works were vested in and constructed and administered by the Parochial Board of Wemyss as the local authority under the Public Health (Scotland) Act 1867.

The debts due by the special districts of Buckhaven and East Wemyss were taken over and paid by the Parochial Board as the local authority of Wemyss, and the special districts were thereafter treated, like the other parts of the parish, as if they had not been formed into special districts. To provide funds for the construction of the water-works, sums of money were borrowed from time to time by the said Parochial Board as local authority of the said parish, in security of the repayment of which, and of interest thereon, the water assessments of the parish, including the special districts above mentioned, and also the general public health assessments of the parish, were pledged. Such was the position of matters when the Local Government (Scotland) Act 1889 came into operation, and the parish of Wemyss became part of the Kirkcaldy district of the county of Fife.

In June 1890 a Sub-Committee of the Kirkcaldy District Committee was appointed to manage and maintain the water supply