to any part or portion thereof in all time coming."

Now I think the proper reading of the obligation for payment of £1 every twenty-five years as taxed composition to be this, that while expressed as attached to the tenure of the feu by the nineteen disponees and their "successors in office," just as the obligation for feu-duty is, it was intended, like the obligation for feu-duty, to have a currency commensurate with the continued life of the feu. This, by the conception of the charter, was only limited by the time during which the feu should continue to be used for the purposes of a public school. I am unable, looking to the way in which the charter is expressed, to read the reddendo as meaning that the arrangement for a taxed and nominal composition was intended to have a different currency from the obligation for feu-duty, also nominal in amount; and it is allowed that, according to the true conception of the charter, the feu is validly vested in the School Board as lawful successors therein. I accordingly agree in thinking that the questions should be answered as your Lordships propose.

The Court answered branch (*b*) of the first question in the affirmative, and found it unnecessary to answer the other questions.

Counsel for the First Parties — Cooper, K.C.—W. J. Robertson. Agent—Sir Thomas Hunter, W.S.

Counsel for the Second Parties—Murray, K.C.—Watson. Agents—Beveridge, Sutherland, & Smith, W.S.

Friday, November 20.

FIRST DIVISION.

(EXCHEQUER CAUSE).

INLAND REVENUE *v.* SHIELS' TRUSTEES.

Revenue—Income Tax—Earned Income—Business Carried on by Testamentary Trustees for Behoof of Minor Beneficiaries — Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 41—*Finance Act* 1907, (7 *Edw. VII, cap.* 13), *sec.* 19.

A business was carried on by testamentary trustees for behoof of two minor beneficiaries of the will. The whole net profits of the business were annually paid over to or on behalf of the beneficiaries. *Held* that the business not being the property of the beneficiaries but of the trustees, and the profits not being earned by the beneficiaries but by the trustees, they were not entitled to relief from income tax on the profits of the business, as on "earned income," in terms of sec. 19 of the Finance Act 1907.

The Finance Act 1907 (7 Edw. VII, cap. 13) enacts—Sec. 19—"(1) Any individual who claims and proves, in manner provided by this section, that his total income from all sources does not exceed two thousand pounds, and that any part of that income is earned income, shall be entitled, subject to the provisions of this section, to such relief from income tax as will reduce the amount payable on the earned income to the amount which would be payable if the tax were charged on that income at the rate of ninepence. . . . (7) For the purposes of this section . . . the expression 'earned income' means . . . (*c*) Any income which is charged under Schedules B or D in the Income Tax Act 1853, or the rules prescribed by Schedule D in the Income Tax Act 1842, and is immediately derived by the individual from the carrying on or exercise by him of his profession, trade, or vocation either as an individual, or in the case of a partnership as a partner personally acting therein."

The Income Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 41, enacts — "The trustee, guardian, tutor, curator, or committee of any person, being an infant . . . and having the direction, control, or management of the property or concern of such infant . . . shall be chargeable to the said duties in like manner and to the same amount as would be charged if such infant were of full age. . . ."

At a meeting of the Commissioners for the General Purposes of the Income Tax Acts held at Edinburgh, the trustees of the late Sidey Shiels, wine merchant, Leith, *respondents*, appealed against an assessment for the year ending the 5th day of April 1911 on the sum of £1003 at the rate of 1s. 2d. in the £ in respect of profits of a business of wine merchants carried on at 134 Constitution Street, Leith, under the name or style of William Shiels & Company. The appeal was taken on the ground that the assessment should be at the rate of 9d. per £ in terms of the Finance Act 1907, sec. 19.

The Commissioners allowed the appeal, and Cecil Fry, Surveyor of Taxes, Edinburgh, *appellant*, having expressed dissatisfaction with their determination as being erroneous in point of law, stated a Case for appeal.

The Case, *inter alia*, stated—"The following *facts* were admitted or proved:—1. The said business originally belonged to the late Mr Sidey Shiels. He died on the 17th November 1906, leaving a trust-disposition and settlement dated the 5th day of July 1900, by which he assigned and disponed to the trustees therein named the whole estate, heritable and moveable, real and personal, belonging to him at his decease.

"2. The testator directed the said trustees, *inter alia*, to give the liferent of the sums received by his trustees from any policies of assurance on his life to his sister Frances Elizabeth Shiels during her life, and to pay over the free annual proceeds of the residue of his estate (as well as the annual revenue from the sums to be received from the said life policies when the liferent in favour of the said Frances Elizabeth Shiels should come to an end) to his widow Isabella Pyper Millons or Shiels during her viduity. He thereafter directed his said trustees to divide the whole residue and remainder of his

estate amongst such of his children as should be alive at the respective dates of division, equally among them, share and share alike, if there should be more than one, and if there should be only one such child, then the whole to that one child.

"3. The trustees were empowered to apply the whole or any part of the income of the prospective share of a minor for or towards his or her maintenance or education, with liberty to pay the same to the guardians or guardian of such minor for the purposes aforesaid. His said estate included the business aforesaid, and his trustees were given power under the said trust disposition and settlement to carry it on for such time and on such conditions as they might think fit.

"4. Isabella Pyper Millons or Shiels died on the 16th day of January 1908. Frances Elizabeth Shiels still survives.

"5. The whole residue of the estate is being held by the said trustees for behoof of Ann Sidey Shiels and Isabel Marjory Shiels, daughters of the late Sidey Shiels (who are both minors), as residuary beneficiaries under the said trust-disposition and settlement. The said business is carried on, managed, and controlled by the surviving trustees.

"6. The said Mrs Shiels was the guardian of her children. The trustees with the concurrence of all concerned, for their interests appointed one of the late Mr Sidey Shiels' employees in the business to conduct the same, and the said employee has continued to do so. The sole reason why the business has been carried on since the death of Mrs Shiels by the trustees is that the beneficiaries, being minors, have been unable to grant a discharge to them.

"7. The total income of each of the Misses Shiels does not exceed £2000.

"8. The whole net profits of the said business were annually paid over to or on behalf of the said Misses Shiels."

The *trust-disposition* provided — ". . . (*Fourth*) I bequeath the liferent of the sums to be received by my trustees from any policies of assurance on my life which they may collect to my sister Miss Frances Elizabeth Shiels, payable said liferent to my said sister during her life only: (*Fifth*) I direct my said trustees to pay over the free annual proceeds of the residue of my means and estate (as well as the annual revenue from the sums to be received from the said life policies when the liferent in favour of my said sister shall come to an end) to my wife, the said Mrs Isabella Pyper Millons or Shiels, in case she shall survive me, during her viduity, as an alimentary provision payable to her for her own maintenance and for the maintenance of such of my children as may be minors or unmarried in the case of daughters, such maintenance to be continued until such time as my trustees may be called upon under the after-mentioned provision to make advances to any daughters of mine respectively for marriage: . . . (*Lastly*) After providing for the foregoing purposes I direct my said trustees to divide the whole residue and remainder of my means and estate amongst such of my children as shall be alive at the respective dates of division, equally among them, share and share alike, if there should be more than one, and if there should be only one such child, then the whole to that one child: Provided always, and I hereby declare, that if any child of mine shall die in my lifetime or before acquiring a vested right in a share of my estate (either original or accruing) leaving a child or children who being male shall attain the age of twenty-one years, or being female shall attain that age or marry, then and in every such case the last-mentioned child or children shall take (and if more than one equally among them) the share which his, her, or their parent would have been entitled to receive in the residuary trust funds if such parent had survived: And I hereby provide that during the pupillarity or minority of any child or grandchild of mine who if of the age of twenty-one years would for the time being be entitled in possession to a share of the residuary trust funds, my trustees may apply the whole or any part of the income of the respective share of such pupil or minor for or towards his or her maintenance or education, with liberty to pay the same to the guardians or guardian of such pupil or minor for the purpose aforesaid without being liable to see to the application thereof: . . . And I further hereby authorise my said trustees to continue any investments which I may have at the time of my decease, and also to continue to carry on for such time as they may consider desirable the business of William Shiels & Company, of which I am at present sole partner, and that for such time and on such conditions as they may think fit."

Argued for the appellant—It was, no doubt, the case that the income in question was "earned income" in the sense of the Finance Act 1907 (7 Edw. VII, cap. 13), sec. 19, but since it was not earned by the beneficiaries under the will they were not entitled to relief upon it. It was in fact earned by the trustees, who were a *persona*, whereas section 19 gave relief only to individuals. The right of the beneficiaries was merely a *jus crediti*. Sections 19 (5) and 19 (7) (*c*) emphasised that relief was only to be allowed to individuals. A similar emphasis was laid on the right of individuals in the Finance Act 1898 (61 and 62 Vict. cap. 10), sec. 8, and the Finance Act 1910 (10 Edw. VII, cap. 8), sec. 66. The relief allowed by the Income Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 163, had been held not to extend to artificial *personæ—Curtis* v. *Old Monkland Conservative Association*, December 19, 1905, 8 F. (H.L.) 9, 43 S.L.R. 119. The intention of the Legislature was to reward the personal exertions of the individual. The case of *Syme* v. *Commissioner of Taxes*, [1914] A.C. 1013, had no bearing, since it was decided upon the Income Tax Acts of Victoria, where the term "personal exertion" had a meaning different from that in ordinary use. Counsel also referred to sub-sections 2, 3, 4 of section 19 of the Finance Act 1907 and to section 40 of the Income Tax Act 1853 (16 and 17 Vict. cap. 34).

Argued for the respondents—The income

in question was under £2000 and was earned, and it was therefore entitled to relief. The death of the testator was immaterial to changing its character. For income tax purposes the trustee and the minor were the same person, since otherwise the minor would be able to discharge the trustee. In *Drummond* v. *Collins*, [1914] 2 K.B. 643, it was decided that in receiving income the hand of the guardian was the hand of the ward—Cozens Hardy, M.R., at 655. Similarly here the hand of the trustee was the hand of the beneficiary. The relief was granted for "personal exertion" whether that of the individual relieved or not—*Syme* v. *The Commissioner of Taxes* (*cit. sup.*), Lord Sumner at 1021. The Legislature regarded only the ownership of a business for taxation purposes, as in the case of a foreign trader in Great Britain who paid income tax though taking no personal share in the business in this country. The beneficiaries here had already acquired a vested right, since vesting took place at each period of division. Counsel referred to sections 19 (5) and 19 (7) (*c*) of the Finance Act 1907 and to section 41 of the Income Tax Act 1842 (5 and 6 Vict. cap. 35).

At advising—

LORD SKERRINGTON—The question which the appellant, the Surveyor of Taxes, asks us to decide is whether the Commissioners for the General Purposes of the Income Tax Acts came to a right determination when they held that the profits derived from a wine merchant's business carried on in Leith by the testamentary trustees of the late Sidey Shiels under the name or style of William Shiels & Company fall to be assessed at the rate of 9d. per £1 instead of at the ordinary rate of 1s. 2d. per £1. Section 19 (1) of the Finance Act 1907 (7 Edw. VII, cap. 13) enacts that ". . . *quotes, v. sup.* . . ."

It is, I think, obvious that what is contemplated in this sub-section is the case of an individual who has a beneficial right to an income the total of which from all sources does not exceed £2000. Plainly the words "individual" and "income" as used in the sub-section do not include the case of a trustee or of a body of trustees legally vested in a trust estate which produces an income not exceeding £2000. I did not understand counsel for the respondents to controvert this construction of the statute. He referred, however, to section 41 of the Income Tax Act 1842, and argued that a trustee or a guardian may claim relief under section 19 (1) of the 1907 Act on behalf of some individual whom he represents and whose total income does not exceed £2000. In the present case it was contended before the Commissioners that although the business was conducted in name of the testamentary trustees it truly belonged to the two minor daughters of the testator, and that the profits of the business were truly earned income of these ladies, each of whom has an income not exceeding £2000. In harmony with this view of the facts the names of the two ladies appear in the form of declaration printed in the appendix to the case as the partners of the firm of William Shiels & Company, wine merchants, Leith, and the declaration is signed by a firm of Writers to the Signet as agents of the firm of wine merchants. Though the assessment was based on a return made and signed by the same legal firm as agents for the testamentary trustees, the claim for relief is apparently made and signed by the same firm as agents for the Misses Shiels. These ladies are described in the case as the respondents in the present appeal.

The contention of the respondents with reference to the true ownership of the business and its income derives apparent support from a statement in the case to the effect that the sole reason why the business has been carried on by the trustees since the death of the testator's widow "is that the beneficiaries being minors have been unable to grant a discharge to them." This though intended as a statement of fact is really an inaccurate statement of the purport and effect of Mr Sidey Shiels' trust-disposition and settlement, which is printed in the appendix and forms part of the case. The real reason why the business has not been handed over by the trustees to the Misses Shiels was not any technical difficulty in the way of obtaining a discharge from minors unprovided with a guardian, but the much more formidable difficulty that the trustees could not have denuded in favour of minor beneficiaries without committing a breach of trust.

The testator died on 17th November 1906. By his trust-disposition and settlement he, *inter alia*, directed his trustees to pay to his sister, who still survives, the liferent of certain insurance moneys, and to pay the free annual proceeds of the residue of his estate to his widow for her maintenance and that of his children. She died on 16th January 1908, survived by two daughters of the testator who are both still in minority. Although the will is peculiarly expressed, it is, I think, clear that as each daughter attains majority she will acquire an absolute right to one-half of the trust estate (subject to her aunt's partial liferent). If either sister dies in minority leaving issue which attains the age of twenty-one or marries (if a female) such issue will take the parent's prospective share. Failing issue the prospective share of the predeceaser will belong to the surviving sister. During their respective minorities the testator's daughters have no absolute right to any part of the income of the trust estate, but the trustees may apply the whole or any part of the income of the respective share of each for her maintenance or education. In addition to the insurance money the trust estate consisted of heritable property of the annual value (in 1911) of £290 and of the wine merchant's business, which had been carried on by the testator under the name of William Shiels & Company. The trustees, acting in the exercise of an express power to that effect, have continued to carry on the business under the management of one of the employees. The whole net profits of the business were annually paid over to or on behalf of the Misses Shiels. The profits for the year 1910-11 amounted to £1003.

The foregoing summary shows that the respondents' contention rests upon a misapprehension as to the ownership of the business in question. There is no justification for the suggestion that the business and its income are the property of the Misses Shiels, or that they carry on the business as partners. On the contrary, it is certain that the business is the property of the trustees. Seeing that the trustees are two in number they are legally in the position of copartners, but nothing turns upon this specialty. To all material effects the situation would have been the same if there had been only a single testamentary trustee. On a sound construction of the trust-disposition and settlement such a trustee could not have been regarded either as the agent for the Misses Shiels or as a simple trustee who was bound to denude in their favour when called upon.

I am of opinion that the appeal ought to be sustained upon the ground that the business in question belongs to the testamentary trustees, and not to the Misses Shiels, and that the former and not the latter are the persons who earned the profits. A more difficult question would have arisen if the trust had really been one of the simple character contended for by the respondents. On that assumption the Misses Shiels would have been the beneficial owners of the business and of the profits derived therefrom, and it might have been arguable that the testamentary trustees, who were the legal owners of the business and who appointed its manager, must be deemed to have acted as agents for the Misses Shiels in the matter of earning the profits. Even in such a case as I have figured, it would, I think, have been difficult to demonstrate that the profits of the business fell within the definition of "earned income" contained in section 19 (7) (*c*) of the Act of 1907. This definition is not content with requiring that the income in respect of which relief is claimed shall have been "derived from personal exertion," as in the case of the Victorian statute which was before the Privy Council in *Syme* v. *Commissioners of Taxes*, [1914] A. C. 1013. The definition in the British Act of 1907 is much more stringent, and requires that the income on account of which relief is claimed shall have been "immediately derived by the individual from the carrying on or exercise by him of his profession, trade, or vocation either as an individual or in the case of a partnership as a partner personally acting therein."

LORD JOHNSTON—I have come to the same conclusion. I think that the question before us is solved at once when one observes that section 19 of the Finance Act 1907 (7 Edw. VII, cap. 13), which gives this relief, commences not with the usual words "Any person," which may be held to include a plurality of persons, but with the word "individual," and I think this word is used with a clear intention, and that intention one which squares with the object of the provision. That object I conceive to be to relieve a man who by his own exertions and his own daily work makes an income. If that be so, then section 19, sub-section 1, read in the light of sub-section 7, head (c), makes it quite clear that the profession or the trade must be carried on either by an individual or by a partner "personally acting." Those two expressions "individual" and "personally acting" are both appropriate to the intention of the provision as I have indicated it above. I think it is worth while comparing them with another section in which the word "individual" is used. That will be found in the Finance Act of 1898 (61 and 62 Vict. cap. 10), section 8. There I think that it is used in a sense which throws light by contrast upon the present case. I do not think it necessary to say more except to refer to section 41 of the Act of 1842 (5 and 6 Vict. cap. 35), on which the respondent founded. I question very much whether the word "trustee" at the beginning of that section—"trustee, guardian, tutor, curator, or committee of any person"—is really intended to include the testamentary trustees of somebody else acting for behoof of a minor beneficiary. But even if it did, all that is to follow is that the trustee is to be chargeable with said duties in like manner and to the same amount as would be charged if such infant were of full age. If such infant were of full age and were carrying on the business in the way in which this business is being carried on, neither as an individual nor as a partner personally acting, then it seems to me that such infant would not have the benefit of section 19 of the Act of 1907 by reason of the definition to which I have referred in sub-section 7 of that section, head (c). If the infant, him or herself, would not have the benefit of that section, neither would the trustees.

LORD PRESIDENT—I agree with your Lordships. Unquestionably the profits of this business were in the sense of the statute earned profits, but they were earned by individuals to whom they did not belong, and they belonged to individuals who certainly did not earn them.

Accordingly in my opinion the 19th section of the statute is inapplicable to the case. I propose therefore that we should sustain the appeal and recal the determination of the Commissioners. The assessment originally made by the assessor will stand.

LORD MACKENZIE was not present.

The Court sustained the appeal and recalled the determination of the Commissioners, allowing the assessment made by the assessor to stand.

Counsel for the Appellant—The Solicitor-General (Morison, K.C.)—R. C. Henderson. Agent—Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Respondents — W. T. Watson. Agents — Boyd, Jameson, & Young, W.S.