Tuesday, November 17.

EXTRA DIVISION.

EDINBURGH MAGISTRATES *v.* SCHOOL BOARD OF LEITH.

Superior and Vassal—Entry—Composition —"Successors in Office."

By feu-charter a superior feued a site for a school to nineteen persons, being a committee representing the Commissioners of Police of Leith, managers and patrons of said school. The said charter provided that as long as the ground feued should be held "in the names of the said trustees, managers, and patrons and their successors in office for the purposes before mentioned," the only composition payable should be "one pound sterling, and that at the end of every twenty-five years." The school was administered by the said committee till, in 1848, under the Leith Municipal and Police Act of that year, the subjects became compulsorily vested in the Magistrates and Council of Leith. By disposition dated 1873 the Magistrates,, acting under the power conferred by the Education (Scotland) Act 1870, sec. 38, conveyed the subjects to the School Board of Leith. *Held* that the School Board were "successors in office" within the meaning of the original charter, and consequently liable only for a taxed composition.

A Special Case was presented by the Lord Provost, Magistrates, and Council of the City of Edinburgh, superiors of the town of Leith, *first parties*, and the School Board of Leith, *second parties*, to have it determined whether the second parties were liable to pay to the first parties a taxed composition amounting to £1, or an untaxed composition amounting to £769, 12s., for the subjects at the south-west corner of the Links of Leith, formerly known as Leith Schoolhouse, thereafter as the High School of Leith, and now as Leith Academy.

The Case set forth—" . . . 4. By feu-charter, dated 5th September 1810, the first parties feued a portion of the said superiority of the town of Leith as a site for a school for the town of Leith to Robert Menzies and Archibald Miller, Esquires, the two resident magistrates of Leith; Messrs John Hay, Thomas Grindlay, and William Thomson, nominated by the Trinity House of Leith; John Hutchison, William Giles, and Matthew Comb, nominated by the Incorporation of Maltmen of Leith: John Glover, Robert Paterson, and John Russell, nominated by the Incorporation or Incorporated Trades of Leith; William Moubray, John Dudgeon, and Charles Young, nominated by the Incorporation of Traffickers of Leith; Peter Couper, James Weir, and George Anderson, nominated by the Commissioners of Police of Leith; and the Reverend Doctors Robert Dickson and James Robertson, the two ministers of South Leith, in all nineteen persons, being a committee appointed from and as representing the whole Commissioners of Police of Leith, managers and patrons of the said school, as certified by their Act of Sederunt, dated 28th November 1809, and also in terms of and agreeable to Act of Sederunt of said Commissioners, of date 10th March 1803. . . . The said committee were duly infeft in the said subjects conform to instrument of sasine dated 8th November, and recorded in the Particular Register of Sasines at Edinburgh on 11th December 1810.

"5. The said feu-charter contains the following restriction—'If the persons before named or their successors in office shall convert the buildings erected or to be erected on said piece of ground to any other purpose than for a schoolhouse, this feu right shall cease and determine, and said property shall revert back again to us and our successors in office for the use and behoof of the community of the said City of Edinburgh.' The clauses of tenendas and reddendo in the said feu-charter are in the following terms—'To be holden the ground and others before disponed by the said several persons before named as trustees foresaid, and their successors in office, immediately of and under us and our successors in office, immediate lawful superiors thereof in feu farm, fee, and heritage for ever by all the rights, meiths, and marches of the same as they lye in length and breadth, with all and singular liberties, commodities, ishes, entries, easements, and just pertinents thereto belonging as well not named as named, and as well below as above ground, freely, quietly, and in peace: Paying therefor yearly, the trustees, &c., before named and their successors in office, to us and our successors in office, or to our collectors, treasurers, or chamberlains in our names, for the use and behoof of the said city, the sum of ten shillings sterling yearly in name of feu-duty, beginning the first year's payment thereof at the term of Whitsunday in the year 1811 for the year preceding, and so furth yearly thereafter in time coming: And it is hereby expressly provided and declared that so long as the ground before disponed and buildings erected thereon shall be held in the names of the said trustees, managers, and patrons, and their successors in office, for the purposes before mentioned, they and their successors in office shall, by acceptation hereof, be bound and obliged to pay to us and our successors in office, or to our said collectors, treasurers, or chamberlains in our name, for the use and behoof of the said city, the sum of one pound sterling, and that at the end of every twenty-five years, in name of composition for an entry, over and above the feu-duty of the year wherein the entry is made, and to continue such payment at the end of each twenty-five years thereafter so long as said piece of ground and buildings shall be held in manner foresaid, and these for all other burden, question, demand, or secular service whatever which we or our predecessors or successors in office had, have, or can claim or pretend to the ground before disponed or to any part or portion thereof in all time coming.' . . .

"11. By section 16 of the said Leith

Municipal and Police Act 1848 (11 and 12 Vict. cap. cxxiii) it is enacted, *inter alia*, 'that all trusts, mortifications, endowments, bequests, property, and funds under what name or denomination soever, which shall have fallen or accresced to the community of Leith for educational or charitable purposes, or any other public purpose the administration of which is or was vested in any persons or body municipally representing the inhabitants or community of Leith, and particularly the new markets or new market trust, the High School trust, and the bequest, trust, or mortification by the late Dr Andrew Bell of Egmore for educational purposes in Leith (but subject always to the liabilities to which the same are legally subject), shall be and the same are hereby vested in the Magistrates and Council of Leith, to be administered by them for the purposes, and with the rights, powers, and authority, and subject to all the conditions and provisions under and upon which the same or any of them were conveyed, granted, or settled by the granters or makers: Provided always that nothing herein contained shall affect the rights or powers conferred upon any private individual by any deed constituting the said trusts, mortifications, bequests, or endowments, or any of them, and specially reserving the rights of the ministers of South Leith to act as trustees along with the Magistrates and Council in the High School trust.' In the year 1860 the said corporation as trustees foresaid paid to the first parties the composition of £1 then payable under and in terms of the said feu-charter.

"12. By section 38 of the Education (Scotland) Act 1872 (35 and 36 Vict. cap. 62) it is enacted, *inter alia*—"With respect to schools now existing or which may hereafter exist in any parish or burgh erected or acquired and maintained or partly maintained with funds derived from contributions or donations (whether by the members of a particular church or religious body or not) for the purpose, or authorised by the contributors or donors to be applied for the purpose, of promoting education, be it enacted that it shall be lawful for the person or persons vested with the title to any such school, with the consent of the person or persons having the administration of the trusts upon which the same is held, to transfer such school, together with the site thereof and any land or teacher's house held and used in connection therewith, to the school board of the parish or burgh in which it is situated, to the end and effect that such school shall thereafter be under the management of such board as a public school in the same manner as any public school under this Act, and it shall be lawful for the school board, with the sanction of the Board of Education, to accept of such transference, and on the same being made and accepted, the said school, with the site and any land and teacher's house included in the transference, shall be vested in the school board, and the school shall thereafter be deemed to be a public school under this Act, and shall be maintained and managed by the school board, and be subject to all the provisions of this Act accordingly.'

"13. By disposition, dated 7th October 1873 and 25th January 1876, and recorded in the General Register of Sasines applicable to the county of Edinburgh 29th January 1876, the Provost, Magistrates, and Town Council of the Burgh of Leith, as trustees, managers, and patrons of the High School of Leith, and the Reverend James Mitchell, minister of the parish of South Leith, as a trustee, manager, and patron of the said school, conveyed the said piece of ground to the second parties. The said disposition proceeded upon a narrative of the said feu-charter and section 16 of the Leith Municipal and Police Act 1848, and on the further narrative—'And further considering that the School Board of the Burgh of Leith, incorporated and acting under the Education (Scotland) Act 1872, have requested us, the said trustees, to transfer the said High School and pertinents to them in terms of said statute to be held by the School Board for the purposes of said Act (to the acceptance of which transfer the Board of Education have granted authority to said School Board by minute dated 30th June 1873).' The said disposition further contained the following declaration:—'Declaring that these presents are granted in trust for the end and effect that the said school shall hereafter be under the management of the School Board of Leith as a public school in the same manner as any public school under the Education (Scotland) Act 1872.'

"14. In terms of the said feu-charter another composition became payable on 5th September 1885, and on 12th January 1887 the second parties paid to the first parties the sum of £1 in settlement of the said composition, and the first parties granted a receipt to the second parties for this sum, which was endorsed upon the said feu-charter. The receipt is in the following terms:—'*Edinburgh, 12th January* 1887. Received from the School Board of the Burgh of Leith, as the successors of the trustees, managers, and patrons of the school-house for the town of Leith within mentioned, by the hands of T. T. Gray, Esq., 2 Links Place, Leith, the sum of one pound sterling, being periodical composition due on 5th September 1885 in respect of the subjects within described. (Signed) Robert Adam, City Chamberlain.'

"15. A further composition became due by the second parties to the first parties in respect of the said piece of ground on 5th September 1910 and is still unpaid. The first parties claim that an untaxed composition is payable by the second parties. The second parties decline to pay an untaxed composition, but have offered to pay the sum of £1 in full of the first parties' claim for a casualty. The said piece of ground with the buildings thereon appeared in the valuation roll of the burgh of Leith for the year to Whitsunday 1911 at the yearly valuation of £906. The parties are agreed that if an untaxed composition is due, as contended

for by the first parties, the amount payable by the second parties to the first parties is £769, 12s."

The following *questions of law* were submitted—"1. (*a*) Are the second parties, upon the facts above set forth and on a sound construction of the terms of the said feu-charter, singular successors of the original vassals and of their successors in office? or (*b*) Are they the successors in office within the meaning and intent of the said feu-charter of the original vassals? 2. (*a*) In the event of the first branch of the above query being answered in the affirmative and the second in the negative, are the first parties entitled to exact from the second parties a sum equal to one year's rent, subject to the usual deductions, in name of composition? or (*b*) Are the first parties barred by their actings from now exacting an untaxed composition from the second parties and their successors in the feu?"

Argued for the first parties—Even if the second parties held the subjects for precisely the same purposes and under the same trusts as the previous holders, that did not decide the question, which was a strictly feudal one. In feudal language everyone who was not entitled to enter as an heir was a singular successor. If he entered by virtue of a disposition, as did the second parties here, he was a singular successor and as such liable to pay composition—Ersk. ii, vii, 1. Accordingly the question was to be decided not by reference to the beneficial interest but to the investiture. The case of *Crawfurd* v. *Dempster*, February 26, 1879, 6 R. 708, 16 S.L.R. 398, applied to the present case absolutely in terms. Even though, as must be admitted, the new managers established by the Leith Municipal Police Act 1848 (11 and 12 Vict. cap. cxxiii) must be regarded as successors in office of the original feuars, the second parties were in quite a different position, for in their case the transference had been voluntary and not compulsory as in 1848. Further, the second parties could not be said to hold for the same purposes and under the same trusts as the original vassals, for they could, if they chose, close the school and use it for other purposes—*School Board of Glasgow* v. *Kirk-Session of Anderston*, 1910 S.C. 195, 47 S.L.R. 278.

Argued for the second parties—The second parties were obvicusly successors in office, and as such only liable in the taxed composition. The whole question here was, what was the intention of parties at the time of the original charter—*Campbell* v. *Orphan Hospital*, June, 28, 1843, 5 D. 1273. Here the superior had obviously intended to grant entry to a perpetual succession of managers for the school, and the second parties clearly fell within that class—*Lauderdale* v. *Hogg*, June 10, 1897, 24 R. 914, 34 S.L.R. 689. Trustees who continued a trust for the same purposes as those for which it had been constituted were always entered as heirs, and so here the second parties could not be regarded as singular successors of those who had previously managed the school—*Ferguson* v. *Marjoribanks*, April 1, 1853, 15 D. 637. The first parties were wrong therefore in saying that the beneficial interest did not affect the question. The second parties' contentions were supported by the following authorities—*Hills Trustees* v. *Kay*, February 19, 1902, 4 F. 572, 39 S.L.R. 392; *Stirling* v. *Ewart*, February 14, 1842, 4 D. 684; Bell's Lectures on Conveyancing, vol. ii, 1136; Duff's Feudal Conveyancing, pp. 86 and 216; Graham on the Education Acts (1911 ed.) 319; Titles to Land Consolidation Act (31 and 32 Vict. cap. 101), sec. 26. In any event the Magistrates and Council of Leith were impliedly entered by the Conveyancing (Scotland) Act 1874 (37 and 38 Vict. cap. 94), and so the fee was full and no casualty could be demanded except the composition stipulated for in the charter. Further, the superior was barred from insisting in his present claim by the fact that he had taken a taxed composition in 1860 and in 1887—*Lord Advocate* v. *Moray*, February 16, 1894, 21 R. 553, 31 S.L.R. 432.

At advising—

LORD DUNDAS — . . . It appears to me that our decision must depend, not upon any technicality of feudal law or tenure, but upon the construction as a matter of contract of the original feu-charter. The sole question, I think, is whether or not the second parties are the "successors in office" of the persons in whose favour the superiors granted that charter in 1810.

The scheme of the charter was to dispone the subjects in feu-farm perpetually for a yearly feu-duty of 10s. sterling, but under the express condition that if the original feuars or their successors in office should convert the buildings erected or to be erected to any other purpose than for a schoolhouse, the feu right should cease and determine, and the property should revert to the superiors. But the feu-charter provided that so long as the property was held by the original feuars—who were nineteen persons named in the deed—"being a committee appointed from and as representing the whole Commissioners of Police of Leith, managers and patrons of said school, as certified by their Act of Sederunt dated the 28th day of November 1809," and "their successors in office, also in terms of and agreeable to Act of Sederunt of said Commissioners, of date the 10th day of March 1803," the only composition payable should be "one pound sterling, and that at the end of every twenty-five years." It is therefore clear that the feu-charter contemplated a permanent possession of the subjects by the nineteen feuars "and their successors in office as trustees, managers, and patrons of the said schoolhouse," and that if the second parties fall under the category of "successors in office" they cannot be liable in any larger composition than £1. One must have regard, in considering this question, to the nature of the undertaking vested in and to be administered by the original nineteen feuars. The board of management was constituted without much formality by the said Act of Sederunt of the Commissioners of Police of Leith in 1803, which merely states that the Commissioners "were unanimously of opinion

that the schools should be built by public subscription, and that the management and patronage thereof should be vested in the two resident magistrates of Leith for the time being, the two ministers of South Leith for the time being, and a committee of 15 persons to be annually chosen as follows, viz.—3 by the Commissioners of Police, 3 by the Trinity House of Leith, 3 by the Corporation of Maltmen in Leith, 3 by the Convenery of the Trades in Leith, and 3 by the Corporation of Traffickers, making in all 19"; and as appears from the other Act of Sederunt referred to the first committee of fifteen were duly elected, and the "managers and patrons" at their meeting on 28th November 1809 directed their clerk forthwith to apply for and obtain a charter from the superiors. We have nowhere any more precise definition of the nature and purposes of the original enterprise. The feu-charter was, as already explained, granted in 1810 in favour of the nineteen persons "and their successors in office as trustees, managers, and patrons."

The school was administered by these managers until 1848, when the Leith Municipal and Police Act (11 and 12 Vict. cap. cxxiii) became law. This statute by section 16 enacted, *inter alia*, that various trusts and mortifications, including by name "the High School trust," should be vested in the Magistrates and Council of Leith, to be administered by them for the purposes and with the rights, powers, and authority, and subject to all the conditions and provisions under and upon which they were conveyed, granted, or settled by the granters or makers; and the right of the two ministers of South Leith to act as trustees along with the Magistrates and Council in the High School Trust was specially reserved. It was deliberately conceded by counsel for the first parties that the new managers thus established by Act of Parliament must be regarded as "successors in office" of the original feuars of 1810. I think the concession was rightly made, and it seems to be in accordance with the views of the superiors and their advisers at the time, for in 1860 the new board paid and the superiors accepted a composition of £1 in terms of the feu-charter. It is true that the Act of 1848 made a statutory change in the composition of the managing board and in the mode of their selection, but the subjects to be managed and the purposes of their administration remained the same, and I do not doubt that the body of managers appointed by Parliament in 1848 must be regarded as "successors in office" of the original "trustees, managers, and patrons."

The Leith Magistrates and the two ministers held the subjects and administered the school until they transferred the subjects to the second parties. The disposition by which they did so was dated in 1873 and 1876 and recorded in 1876. It proceeded upon the authority of section 38 of the Education (Scotland) Act 1872, and narrated, *inter alia*, a request by the School Board, with the authority of the Board of Education, to the disponers for a transference of the subjects, and contained a declaration that the deed was granted "in trust for the end and effect that the said school shall hereafter be under the management of the School Board of Leith in the same manner as any public school under the Education (Scotland) Act 1872." The period of twenty-five years from the date when the last composition was paid ran out in 1885, and in 1887 the second parties paid £1 to the superiors, who granted a receipt in the following terms—"Received from the School Board of the Burgh of Leith as the successors of the trustees, managers, and patrons of the schoolhouse . . . the sum of one pound sterling, being periodical composition due on 5th September 1885 . . ." The terms of this receipt, whatever effect they might have with reference to a plea of bar, seem to indicate that the first parties and their advisers in 1887 took the same view of the true intent and meaning of the contractual agreement of 1810 as is now maintained by the second parties. A further period of twenty-five years having expired on 5th September 1910, the superiors claimed payment of an untaxed composition, and the present case has been brought to ascertain whether an untaxed or only a taxed composition is justly payable by the School Board.

I think the second parties are in the right of the matter. It appears to me that they are, as the statutory body of trustees appointed in 1848 were—although this point is not, perhaps, so clear as it is in the former instance — "successors in office" of the original "trustees, managers, and patrons." Counsel for the superiors pointed to what they said was a vital distinction between the two cases, viz., that in 1848 the statutory transference was compulsory, while under the Act of 1872 it was optional to both parties. It is true that in 1848 there was a statutory vesting, and in 1873 a disposition following upon a voluntary request on the one hand and acceptance on the other. But whatever point this difference might have in a question of feudal tenure, I do not see that it affects the question we are considering. One must look not to the feudal title but to the nature of the "office." The second parties are now managers in their fiduciary capacity of the original ground and school, and are bound like the original feuars to maintain and use them for that purpose only. The original purposes of the undertaking are not expanded or developed in the Act of Sederunt of 1803, which merely indicates the constitution of a board of managers to administer a school for the public benefit of the locality. It may well be that the powers and duties of the original management were in some respects broader, and in others narrower, than those of a modern school board, but counsel for the first parties did not attempt to demonstrate any definite point involving such an essential difference as to make it necessary to regard the new trust management as a different "office" from that of the original managers or of the trust body appointed by the Act of 1848. I think that in point of construction and in accordance with the clear intent and meaning of the con-

tractual agreement in 1810, as well as with the good sense of the situation, the second parties are "successors in office" within the meaning of the feu-charter of 1810.

If I am right in this view, it seems to me to end the case in favour of the School Board. I attach no importance at all to the argument that that body must pay an untaxed composition because they are singular successors. If it were necessary, which it is not, to decide the question, I should be prepared to hold that both the statutory trustees of 1848 and the School Board were singular successors; but assuming this to be so it seems to me to have no effect in the case if I am right in thinking that the School Board are "successors in office" of their predecessors. It is in that latter character that they are included among those whose composition is taxed by the feu-charter to £1 instead of the full composition which would by law have been payable by a singular successor. It follows that the case of *Stirling Crawfurd*, (1879) 6 R. 708, so much relied on by the first parties, does not in my judgment help them at all. The feu-contract there provided that "each singular successor" should pay a duplicand feu-duty on entry. It was held that the Parochial Board as disponee from the Magistrates of Glasgow was a singular successor, Lord Rutherfurd Clark observing that the question must be decided by reference to the investiture and not to the beneficial interest. The question there was not, as it is here, whether the disponee was entitled to the benefit of a taxed entry by agreement, but simply whether he was a "singular successor."

I ought before concluding to notice an argument ingeniously pressed by counsel for the second parties to the effect, as I understood it, that the trustees appointed by the Leith Act of 1848 having been impliedly entered with the superior by force of the Conveyancing Act 1874, the fee was thus full and must remain so, at least as long as the Magistrates and Council of Leith are an existing corporation; and that the superiors' right could therefore be no higher than a periodical demand for £1 against that body, who might seek relief against the School Board. The second parties have no need to rely upon this argument if, as I consider, they are entitled to succeed upon other grounds, and it is therefore unnecessary to pronounce upon its merits or demerits. But I may point out that its success must obviously depend upon the hypothesis that the trustees of 1848 were, in terms of section 4 (2) of the Act of 1874, duly infeft in the subjects at the commencement of the Act; and it seems to me to be, at the least, very doubtful whether the hypothesis could be successfully maintained, looking to the fact that these trustees had no actual infeftment, and to the somewhat vague terms by which "the High School Trust" was vested in them by the Act of 1848.

For the reasons above stated I think we should answer branch (*b*) of the first question put to us in the affirmative. Branch (*a*) does not raise a true alternative to branch (*b*)—I have expressed my view upon it in the course of my opinion—but is really an irrelevant question, and need not be answered. The second question is only stated upon the assumption that our answer to the first question is to the opposite effect. It is therefore superseded and need not be answered.

LORD MACKENZIE—I concur.

LORD CULLEN—I concur in the conclusion at which your Lordships have arrived, although I confess that I have found the case attended with difficulty.

If the words "successors in office" are read in a very strict sense I do not think the second parties can be said to be successors in office of the original nineteen trustees. They have not succeeded to the particular office which was held by these nineteen persons as elective or *ex officio* trustees, patrons, and managers of a voluntary school carried on for the benefit of Leith.

While this is so, one must, I think, read the feu-charter as a whole in order to find out whether the taxation of entry was intended to continue only temporarily while the feu was held by the nineteen disponees or their successors in office in this strict sense, or whether it was not intended to hold good during conditions such as those on which the history of the feu entered when it passed to the School Board.

According to the conception of the feu-charter, the feu was to revert to the superiors if it should be converted to other uses than those of a school. Otherwise the grant was a grant "in feu farm perpetually." Alienation was not and could not lawfully be prohibited. Now the various clauses of the charter are, I think, so expressed as to show that the parties treated the tenure of the feu by the nineteen disponees and their "successors in office" as being commensurate in point of time with the existence of the feu. The expressed obligations of the vassals are laid on the disponees and their "successors in office." In particular I refer to the tenendas and reddendo. Under the latter a nominal feu-duty of 10s. per annum is stipulated for. It is in its nature a perpetual charge on the feu. As expressed, the obligation is laid on "the trustees before named and their successors in office." This does not prevent the nominal feu-duty from being a charge on the feu in whose hands soever it may lawfully come to be. But it shows, I think, that the parties regarded the life of the feu, *i.e.*, so long as it should be used for a school, as being commensurate in duration with the tenure of the nineteen disponees and their "successors in office." Then follows the clause particularly put in issue in this case which stipulates for the payment of £1 every twenty-five years so long as the feu shall be held "in the names of the said trustees, managers, and patrons, and their successors in office, for the purposes before mentioned." And the reddendo concludes—"And these for all other burden, question, demand, or secular service whatever which we or our predecessors or successors in office had, have, or can claim or pretend to the ground before disponed or

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