No. 747.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—11TH AND 12TH MARCH, 1929.

COURT OF APPEAL.—27TH JUNE, 1929.

HOUSE OF LORDS.—27TH FEBRUARY, 1930.

STERN *v.* THE COMMISSIONERS OF INLAND REVENUE.[1]

Super-tax—Part of a share in the income of an estate retained by trustees until beneficiary attains majority—Whether income of the beneficiary.

The Appellant's grandfather left a share of his estate in trust for his son (the Appellant's father) for life and after the father's death in trust for the issue of the father in such shares and on such conditions as the father should appoint: in default of appointment, in trust for those children equally who should attain the age of twenty-one.

The father died in 1919. *His will exercised the power of appointment mentioned above and provided,* inter alia, *that the property settled by the will of the grandfather should on the father's death be divided into as many shares as he should have children surviving him and that each child's share should be held by trustees on trust to pay the income to the child for twenty years from the father's death and after that period, if the child survived, to transfer the corpus to him absolutely.*

As the result of Chancery proceedings with reference to the father's will the Court ordered, inter alia, *that a certain sum per annum should be paid to the guardian of the Appellant out of the income of his share in the grandfather's estate, for his maintenance during minority. It was contended that this amount only should be brought into the computation of the Appellant's liability to Super-tax.*

Held, *that the income of the share of the estate appropriated to the Appellant was all income of the Appellant for Super-tax purposes.*

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(1) Not reported.

CASE

Stated under the Income Tax Act, 1918, Sections 7 (6) and 149, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on the 12th May, 1927, for the purpose of hearing appeals, the Hon. J. H. Stern (hereinafter called "the Appellant") appealed against an assessment to Super-tax in the estimated sum of £70,000 for the year ending 5th April, 1921, made upon him under the provisions of the Income Tax Acts.

2. The Appellant is a son of the late first Lord Michelham and a grandson of the late Baron de Stern.

3. Baron de Stern who died some time before 1919 by his will dated the 17th August, 1881, left a share of his residuary estate in trust for his son Herbert Stern, afterwards the first Lord Michelham. The following extracts from that will are material to this Case, and a copy of the will marked A is attached to(1) and forms part of this Case :—

"And I direct my Trustees . . . . And to stand possessed "of the surplus of my said residuary estate and of the moneys "stocks funds and securities whereof the same shall consist "As to fifteen per cent in value thereof in trust for my "daughter Emily Stern And as to other fifteen per cent in "value thereof in trust for my daughter Laura Stern And "as to forty per cent in value thereof in trust for my said son "Alfred Stern And as to the remaining thirty per cent in "value thereof in trust for my said son Herbert Stern (the first "Lord Michelham) but subject as to all the said respective "parts to the trusts hereinafter declared concerning the same "respectively . . . .

"and from and after her decease (that is the decease of "one of the above mentioned daughters) shall stand possessed "of the corpus of the said share and the annual income thereof "In trust for all or such one or more exclusively of the others "or other of the issue of her my said daughter to be born "during her life or within twenty one years after her death "and if more than one in such shares and with such future "or executory or other trusts for the benefit of the said issue "or some or one of them with such provisions for their "respective maintenance and education or advancement at the "discretion of my Trustees or Trustee or of any other persons "or person and upon such conditions and with such restrictions "and in such manner as she my daughter shall by deed or

(1) Not included in the present print.

" writing sealed and delivered with or without power of " revocation and new appointment or by Will or Codicil " appoint and in default of such appointment and so far as " no such appointment shall extend In trust for the child or " children of her my daughter who being a son or sons shall " attain the age of twenty one years or being a daughter or " daughters shall attain that age or marry under that age . . . .

" and subject to the trusts and provisions aforesaid I direct " that from and after the decease of such respective son of " mine my Trustees or Trustee shall stand and be possessed of " the said residue of the share of my residuary real and " personal estate hereby directed to be held in trust for such " respective son Upon the like trusts and with the like powers " in favour of his issue and children and after his decease as " are hereinbefore declared with respect to the shares of my " said daughters after their respective deaths in favour of their " respective issue and children PROVIDED ALSO And I hereby " declare that notwithstanding the trusts declared of the " respective shares of my said sons and daughters in my said " Will in favour of their respective issue after their respective " deaths it shall be lawful for each of them my said sons and " daughters by deed executed in contemplation of marriage or " by Will to direct and appoint that such portion not exceeding " five thousand pounds of the annual income of the share of " him or her my said son or daughter in my said residuary " estate shall be paid to his or her surviving wife or husband " as the case may be . . . .

" PROVIDED ALSO And I hereby declare that it shall be " lawful for my Trustees or Trustee after the death of any " one of them my said sons and daughters or in his or her " lifetime with his or her consent in writing to raise any part " or parts not exceeding in the whole one fifth part of the " then expectant or presumptive or vested share of any child " of such son or daughter under the trusts hereinbefore " declared and to pay or apply the same for his or her " preferment advancement or benefit as my Trustees or Trustee " shall think fit AND I DECLARE that my Trustees or Trustee " shall after the death of each of them my said sons and " daughters pay or apply the whole or such part as they or he " shall think fit of the annual income of the share to which " any child of such son or daughter shall for the time being be " entitled in expectancy under the trusts hereinbefore declared " for or towards his or her maintenance or education and may " either themselves herself or himself so pay or apply the same " or may pay the same to the Guardian or Guardians of such " child for the purpose aforesaid without seeing to the applica- " tion thereof and shall during such suspense of absolute " vesting as aforesaid accumulate all the residue (if any) of the

" same income in the way of compound interest by investing " the same and the resulting income thereof in manner " hereinafter authorised for the benefit of the person or persons " who under the trusts herein contained shall become entitled " to the principal fund from which the same respectively shall " have proceeded "

4. When the first Lord Michelham (the Appellant's father) died on the 7th January, 1919, disputes arose as to his estate and legal proceedings were begun, but on the 22nd July, 1919, a settlement between the parties was come to, the terms of which were sanctioned and approved by the Court and were embodied in the First Schedule to an Order of Court, dated the 25th July, 1919, a copy of which marked B is attached to(1) and forms part of this Case. The first paragraph of that Schedule provides that Lord Michelham's will dated the 27th September, 1918, shall be proved in solemn form. This was done on the 3rd August, 1919.

5. By his will dated the 27th September, 1918, a copy of which marked C is attached to(1) and forms part of this Case, Lord Michelham made provision for the Appellant out of his share in the estate of Baron de Stern as set out in the following paragraph numbered 5 in the said will of the 27th September, 1918 :—

" 5. WHEREAS under or by virtue of the Will dated the " Seventeenth day of August One thousand eight hundred and " eighty-one and three Codicils thereto dated respectively the " Thirty-first day of July One thousand eight hundred and " eighty-two the Fifth day of January One thousand eight " hundred and eighty-three and the Fourth day of October One " thousand eight hundred and eighty-seven of my late father " Baron Herman de Stern which were respectively duly proved " in the Principal Probate Registry divers trust funds and " property are settled in trust for me and otherwise during " my life and after my decease in trust for all or such one or " more exclusively of the others or other of my issue to be " born during my life or within twenty-one years after my " death and if more than one in such shares and with such " future or executory or other trusts for the benefit of the " said issue or some or one of them with such provisions for " their respective maintenance and education or advancement " at the discretion of the said Testator's Trustees or Trustee " or of any other persons or person and upon such conditions " and with such restrictions and in such manner as I shall " (among other ways) by Will or Codicil appoint Now in " exercise of the said power for this purpose given to me by " the said Will and Codicils of my said father or some or " one of them and of all other powers if any enabling me in " this behalf I DO HEREBY APPOINT AND DIRECT that all

(1) Not included in the present print.

" and singular the trust funds and property held upon the " trusts of the said Will and Codicils of my said father as " aforesaid and the trust premises from time to time repre- " senting the same shall from and after my decease remain " and be and that the Trustees or Trustee for the time being " of the said Will and Codicils of my said father shall stand " possessed thereof upon the trusts hereinafter declared " concerning the same that is to say the said Trustees or " Trustee shall divide the said trust premises into as many " equal shares as I shall have children who survive me or " shall have died in my lifetime leaving a child surviving me " and shall appropriate one of such shares to each such child " who shall survive me or shall have died leaving a child " surviving me (and so that any reference hereinafter " contained to the shares of my respective children in the " said trust premises shall be deemed to apply to the shares " hereinbefore directed to be appropriated to them respectively " whether they shall respectively survive me or not) but so " nevertheless that such respective shares shall be held by " the said Trustees or Trustee Upon the trusts hereinafter " declared concerning the same that is to say the said " Trustees or Trustee shall hold the share appropriated to " each respective child of mine as aforesaid Upon trust that " the said Trustees or Trustee shall if no act or event shall " have happened (other than a consent to the exercise of the " power of advancement hereinafter in this present clause " contained) whereby such share or any part thereof or the " income of such share or any part thereof would if belonging " absolutely to such my child become or have become vested " in or charged in favour of some other person or persons or " any Corporation or Corporations and if such my child shall " be living at the time of my death pay the income of such " share to such my child for the period of twenty years from " the time of my death unless and until before the expiration " of such period such my child shall die or some act or event " shall happen (other than a consent to the exercise of the said " power of advancement, whereby such share or any part " thereof or the income of such share or any part thereof " would if belonging absolutely to such my child become or " have become vested in or charged in favour of some other " person or persons or any Corporation or Corporations AND " if at the expiration of such period of twenty years such my " child shall be living and no act or event shall happen or " have happened (other than a consent to the said power of " advancement) whereby such share or any part thereof or the " income of such share or any part thereof would if belonging " absolutely to such my child become or have become vested in " or charged in favour of some other person or persons or any

" corporation or corporations then the said Trustees or Trustee
" shall at the expiration of the said period of twenty years
" transfer hand over and pay such share to such my child for
" such my child's absolute use and benefit And if such my
" child shall have died in my lifetime leaving a child surviving
" me or if before the expiration of such period of twenty
" years such my child shall die or some act or event shall
" happen or have happened (other than a consent to the said
" power of advancement) whereby such share or any part
" thereof or the income of such share or any part thereof
" would if belonging absolutely to such my child become or
" have become vested in or charged in favour of some other
" person or persons or any corporation or corporations then
" the said Trustees or Trustee shall in the case of such my
" child having died in my lifetime from my death or in the
" case of such my child surviving me from the death of such
" my child before the expiration of the said period of twenty
" years or from the happening of such act or event as aforesaid
" (other than a consent as aforesaid) whichever shall be the
" sooner stand possessed of such share and the income thereof
" In trust for the children or child of such my child who shall
" be born in my lifetime or within twenty-one years after my
" death and shall before the expiration of such twenty-one
" years attain the age of twenty-one years or being female
" marry under that age or shall be living at the expiration of
" such twenty-one years and if more than one in equal shares
" AND I DECLARE that the said Trustees or Trustee may in the
" case of such my child at the discretion of the said Trustees
" or Trustee and in the case of a child of such child of mine
" after the death of such my child or previously thereto with
" the consent in writing of such my child raise any part or
" parts not exceeding in the whole one equal fourth part of
" the then expectant contingent presumptive or vested share
" of such child of mine or of any child of such my child in such
" my child's share and may pay or apply the same for the
" advancement or benefit of such my child or such child of
" such my child in such manner as the said Trustees or Trustee
" shall think fit PROVIDED ALWAYS And I declare that in
" case such my child shall by reason of his or her death in my
" lifetime or before the expiration of the said period of twenty
" years or of any act or event as aforesaid fail to attain a
" vested interest in the corpus or capital of such my child's
" share and shall not have any child who shall attain a vested
" interest therein under the trusts hereinbefore declared then
" the share of such my child and the income thereof or so much
" thereof as shall not have been applied or disposed of under
" the trusts or powers vested in the said Trustees or Trustee
" together with all accretions thereto by virtue of this present
" clause or proviso shall in the case of such my child dying in

" my lifetime then from and after the failure of children of " such my child and in the case of such my child's failure " to attain a vested interest as aforesaid by reason of such " my child's death before the expiration of the said period " of twenty years then from and after the death of such my " child or default or failure of children of such my child " to attain a vested interest as aforesaid whichever shall last " happen and in the case of such my child's failure to attain " a vested interest as aforesaid by reason of some act or event " as aforesaid (other than such my child's death) then from " and after such act or event or default or failure of children " of such my child to attain a vested interest as aforesaid " whichever shall last happen to be held by the said Trustees " or Trustee In trust that the same shall go and accrue by " way of addition to the share or shares hereinbefore directed " to be appropriated to my other children or child as aforesaid " if more than one in equal shares and proportions and so that " the share which shall so accrue and be added to the share of " any child of mine shall be held upon the trusts and subject " to the powers and provisions herein declared and contained " concerning such child's original share or as near thereto " as circumstances will admit "

6. In the above mentioned Order of Court dated the 25th July, 1919, the following paragraph occurs :—

" And it is ordered that during the minority of the infant " plaintiff Jack Herbert Stern or until further order such a " sum as after payment of Income Tax at the current rate " will produce a net income of Five thousand pounds per " annum be allowed for his maintenance such allowance to " commence as from the 7th day of January 1919 and to " be paid to the said Dowager Lady Michelham as guardian " of such infant Plaintiff out of the income of the share " of the trust funds held upon the trusts of the Will and " Codicils of the said Baron Herman de Stern appropriated " to such infant Plaintiff under and by virtue of the said " Will of the said Herbert Baron Michelham "

7. The Appellant attained his majority on the 24th December, 1924.

8. The trustees of the will of Baron de Stern, in pursuance of the Order above quoted, paid in the year 1919–20 the income of which year forms the basis of Super-tax for the year 1920–21 which is the year under appeal, the net sum of £5,000 and the balance of the income of the Appellant's share of his father's share in the residuary estate of Baron de Stern was accumulated by the trustees.

9. Counsel for the Appellant contended :—

(*a*) that in the year material to this Case the Appellant had not a vested interest but only a contingent interest in the income of his share of the estate ;

(*b*) that for Super-tax purposes the only income of the Appellant under his father's will was the annual sum of £5,000 (plus the appropriate addition for Income Tax) paid to his guardian under the Order of Court;

(*c*) that until the 3rd August, 1919, when it was contended the will of September 27th, 1918, first became an effective legal document there was no ground for alleging that the Appellant received or was entitled to any income other than the appropriate proportion of the said sum of £5,000;

(*d*) that the sums accumulated by the trustees for the benefit of the person who might ultimately be entitled to the corpus from which they were derived were net income;

(*e*) that the balance of income accumulated by the trustees was not the Appellant's income for Super-tax purposes.

10. For the Crown it was contended (*inter alia*) :—

(*a*) that the Appellant had at all times material to this Case a vested interest in the income of his share of the de Stern estate;

(*b*) that the whole of such income including the balance accumulated and not merely the sum paid to his guardian by the trustees as maintenance was the income of the Appellant for Super-tax purposes;

(*c*) that the Assessment appealed against was rightly made and should be confirmed subject to agreement as to figures.

11. We, the Commissioners, who heard the appeal, held that the Appellant had from the date of his father's death a vested interest in the income of his share of the estate in question, and that the whole of the income of that share, and not merely the sums paid by the trustees to the Appellant's guardian under the Order of Court of the 25th July, 1919, was income of the Appellant for Super-tax purposes. We accordingly reduced the assessment to £49,765 which is the amount agreed by the parties to be correct on the basis of our decision.

12. The Appellant immediately upon the determination of the appeal declared to us his dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Income Tax Act, 1918, Section 7 (6) and 149, which Case we have stated and do sign accordingly.

H. M. SANDERS,
MARK STURGIS,
} Commissioners for the Special Purposes of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.
9th May, 1928.

The case came before Rowlatt, *J.*, in the King's Bench Division on the 11th and 12th March, 1929, and on the latter date judgment was given in favour of the Crown, with costs.

Mr. G. M. Edwardes Jones, K.C., and Mr. A. M. Bremner appeared as Counsel for the Appellant, and the Attorney-General (Sir T. Inskip, K.C.), Mr. J. H. Stamp and Mr. R. P. Hills for the Crown.

JUDGMENT.

Rowlatt, J.—I really do not feel any difficulty about this case. The question is whether the Appellant is liable for Super-tax in respect of income upon his share of certain property during his minority. The income was not paid to him; it was being accumulated for him; he has now attained the age of twenty-one years and is entitled to the accumulations on any view. But the question is whether he was, while yet a minor, absolutely entitled to these accumulations—if so, he must pay Super-tax upon them—or whether he had no interest in them except contingently on his attaining the age of twenty-one.

The first document to be considered is the will of his grandfather, Baron de Stern, who left sums, to put it quite shortly, to his sons, under which this young man would ultimately receive a share on the death of his father and contingently upon his reaching the age of twenty-one years. So far that is quite clear. If it stopped there, the position after his father's death, he being still under age, would be this, that the legacy to which he was contingently entitled would bear interest, but the interest would not be vested in him; it would be accumulated and follow the principal, and, therefore, would only become his property if and when he attained the age of twenty-one. That result would not prevent his being allowed maintenance by the Court out of the interest to which he was only contingently entitled. The authority for that is In re *Bowlby*, [1904] 2 Ch. 685, and In re *Blackwell*, [1925] Ch. 312—In re *Bowlby* especially.

The father of this young man, Lord Michelham, under this same will had a power of appointment over this fund; in his will he made an appointment, and the appointment which he made was this: he appropriated a certain part of the fund which came to his branch to this boy—the part of the old grandfather's property, if I may describe it shortly in that way, he appropriated to this young man. Then he said that for twenty years he was to be paid the interest.

Now that has effect, I should have thought, quite clearly in this way. Whereas his grandfather had provided that in default of appointment he could become only contingently entitled to the principal on his attaining twenty-one years, and therefore only

(Rowlatt, J.)

contingently entitled to the interest in the meantime—" I " say under my power of appointment he shall become absolutely " entitled to the interest for twenty years "; and if in the first part of that twenty years he is under twenty-one, he is still absolutely entitled to that interest. Being an infant he could not give his trustees a receipt for the money if they handed it over to him in the ordinary way, but it would be his money and something would be allowed him, no doubt, for maintenance or on his account for maintenance. But in so far as it was not allowed to him, it would not be any the less his; it would be simply retained in hand until he could give a receipt for these accumulations when he attained the age of twenty-one years. That is the quite clear effect, as I understand it, of those two wills read together.

Now there were some disputes after the death of Lord Michelham, arising out of which there were proceedings in the Court of Chancery, and an order was made headed, amongst other things, " In the matter of the . . . Will of Herman de Stern ", and " In the matter of . . . the Infants " including this infant, and it provided that an allowance should be paid to him by way of maintenance during his infancy, out of the income appropriated to him by and under the will of Lord Michelham, and that the will of Lord Michelham, which had not been proved in fact at the date when this order was made, should be proved. When the will is proved, of course that has the effect, as from the date of the death, of authorising everything done as from that date. Therefore, upon the footing that Lord Michelham's will has taken effect upon the fund and on the footing, therefore, that he is entitled to the interest on this fund absolutely year by year, the order authorises the making of an allowance of £5,000 a year for his maintenance out of it. It does not in the least affect the position that the rest of it is not paid to him, as far as I can see. Mr. Edwardes Jones has argued, first of all, that I am not to look at Lord Michelham's will at all because the order was not applicable to the trusts of his will—and literally I cannot understand it. It is part of the order that that will should be proved, and the order itself refers in the relevant paragraph to Lord Michelham's will. I confess I am unable to understand the argument at all.

It is also argued by Mr. Edwardes Jones that what Lord Michelham's will did was only to appropriate a fund, and that it is only in that respect it is referred to in the order. Well, it simply is not so. It appropriates the fund, but it gives the boy *in presenti* from the death the interest of the fund, and if he is an infant, that does not prevent him taking the interest; it only prevents him collecting the money. The money has been there in the shape of income; it has been his income; he must pay Super-tax, and this appeal, in my judgment, must be dismissed with costs.

The Appellant having appealed against this decision, the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Lawrence and Slesser, *L.JJ.*) on the 27th June, 1929, when judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. G. M. Edwardes Jones, K.C., and Mr. A. M. Bremner appeared as Counsel for the Appellant, and Sir T. Inskip, K.C., Mr. J. H. Stamp and Mr. R. P. Hills for the Crown.

JUDGMENT.

Lord Hanworth, M.R.—We need not trouble you, Mr. Stamp.

This case really raises a point which Mr. Justice Rowlatt has disposed of, and I feel unable to add anything to what he has said but, in order that I may show that I have appreciated the arguments of Mr. Edwardes Jones, I just desire to say quite shortly how the matter stands.

Baron de Stern, a wealthy man, made his will on the 17th August, 1881; he had several children, one was Herbert de Stern, and he had two daughters. Herbert de Stern afterwards was created Baron Michelham. Now, Baron Michelham outlived his father, made his will on the 27th September, 1918, and died on the 7th January, 1919. At his death he left one son who was still under age. There were two sons, as I understand it, the present Lord Michelham and this son, who was still, at the date of his father's death, under age. This Appellant did not come of age until December 24th, 1924. There was thus an interval from the 7th January, 1919, until December 24th, 1924, during which the present Appellant was a minor, and during that time there were accumulations of income which amounted to a very considerable sum.

The question that has to be decided in this case is whether or not the Appellant, Mr. J. H. Stern, is liable to pay Super-tax in respect of this sum, accumulated during those two dates which I have mentioned, estimated at the sum of £70,000 for the year ending the 5th April, 1921.

Now what is said is this: That whatever else it is, it is not income; there was accumulation, it is true; but the income and the accumulations of income follow the corpus, and inasmuch as the corpus was not vested in Mr. J. H. Stern, there has never been a state in which Mr. Stern had a vested interest in the totality of the two sums, namely, the corpus plus the accumulations which have for this purpose to be treated as corpus, for that is what has become their nature. That is the way in which it is put.

Another way in which it is put is that it is quite true that Lord Michelham intended to make and endeavoured to make an appointment in respect of this income, but that it was a bad appointment

(Lord Hanworth, M.R.)

Now, in the Case we have got an extract from Baron de Stern's will which I need not repeat, but that did give a power of appointment to his son, Lord Michelham, and Lord Michelham, on pages 6 and 7 in the clause of his will which we have got says: "I do hereby appoint and direct that all and singular the trust "funds and property held upon the trusts of the said Will and "Codicils of my said father" and so on, "shall remain and be" in those trustees and they "shall stand possessed thereof upon "the trusts hereinafter declared . . . . . that is to say the said "Trustees or Trustee shall divide the said trust premises into as "many equal shares as I shall have children who survive me or "shall have died in my lifetime leaving a child surviving me", and at the close of that he says this: "or have become vested in "or charged in favour of some other person or persons or any "Corporation or Corporations and if such my child shall be living "at the time of my death pay the income of such share to such my "child for the period of twenty years from the time of my death "unless and until before the expiration of such period such my "child shall die or some act or event shall happen".

Now we are not dealing with the question of the corpus at all. We are dealing with the accumulations that have arisen out of this direction and appointment which I have just read, the direction, that is to say, that the income of such share is to be paid "to such "my child for the period of twenty years", and the question that arises is: Is that, first of all, a good appointment at all? Mr. Edwardes Jones says it is a bad appointment. I have listened to his arguments and to the authorities, and I fail to see that it can be swept aside as a bad appointment altogether.

Then the next argument is: Even assuming it be an appointment, it is an appointment under which the accumulations so directed follow the corpus, which is said not to be vested and the income so accumulated is not vested in the child.

It appears to me, for the reasons which have been stated by Mr. Justice Rowlatt, and I cannot possibly add to or improve upon them, that the child there spoken of did take a vested interest in that income for the period of twenty years "from the time of my "death". Now, if he took a vested interest in that income, he took that income; it became his income, and it is subject to the Super-tax which is to be collected.

Mr. Justice Rowlatt has dealt more specifically with the actual terms of the documents. I think it is quite unnecessary to go through them again. I have merely added some details in order to show that I have not failed to appreciate the argument which has been presented to us, but, for the reasons given by Mr. Justice Rowlatt, I am satisfied that he was right, and that the appeal must be dismissed with costs.

Lawrence, L.J.—I entirely agree with the judgment delivered by Mr. Justice Rowlatt in this case, which covers the ground completely and to which I do not feel able to add anything useful.

Slesser, L.J.—I agree.

The Appellant having appealed against this decision, the case came before the House of Lords (Viscount Dunedin, Lord Warrington of Clyffe and Lord Atkin) on the 27th February, 1930, when judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. G. M. Edwardes Jones, K.C., and Mr. A. M. Bremner appeared as Counsel for the Appellant, and the Attorney-General (Sir W. A. Jowitt, K.C.), Mr. J. H. Stamp and Mr. R. P. Hills for the Crown.

JUDGMENT.

Lord Warrington of Clyffe.—My Lords, this is an appeal from an Order of the Court of Appeal affirming an Order of Mr. Justice Rowlatt, who had himself affirmed an Order of the Commissioners of Income Tax. The question raised is one with regard to Super-tax. The present Appellant—to put the facts quite shortly for the moment—after the death of his father became entitled to be paid the income of a certain share of his grandfather's estate during the period of twenty years from his father's death. He attained the age of twenty-one years within a few years of the death of his father, and the trustees, in whom the fund was then vested, paid to him so much of the income of the fund in question which had accrued between his father's death and his own majority as had not been applied for his maintenance. It is with regard to that income that the question arises. The whole question turns on whether or not, according to the true construction of his father's will, he became absolutely entitled to a vested interest in that income.

To go a little more into detail, it is necessary to state, as shortly as may be, the provisions made by the two testators whose wills are in question. The first of those was the Appellant's grandfather, Baron de Stern. He made his will on the 17th August, 1881, and by it he made provision for his children, and on page 14 of the Appendix there is this provision which relates to the shares of his daughters, but, by a subsequent direction in the will, it is applicable to the shares of his sons as well. That provision is this: The trustees are directed from and after the decease of the daughters to "stand possessed of the corpus of the said share and the annual "income thereof In trust for all or such one or more exclusively

(Lord Warrington of Clyffe.)

" of the others or other of the issue of her my said daughter to be " born during her life or within twenty-one years after her death " and if more than one in such shares and with such future or " executory or other trusts for the benefit of the said issue or " some or one of them with such provisions for their respective " maintenance and education or advancement at the discretion of " my Trustees or Trustee or of any other persons or person and " upon such conditions and with such restrictions and in such " manner as she my daughter shall by deed or writing sealed and " delivered with or without power of revocation and new appoint- " ment or by Will or Codicil appoint and in default of such " appointment and so far as no such appointment shall extend In " trust for the child or children of her my daughter who being a " son or sons shall attain the age of twenty-one years or being a " daughter or daughters shall attain that age or marry under that " age " with certain consents. It will be seen, therefore, first, that the parent is to have the widest possible power of disposition among his issue of the share to the income of which he or she had been entitled during life; and, secondly, it is to be noted that in default of appointment no child of a son or daughter is to attain a vested interest until he reaches the age of twenty-one years—that is quite plain. The consequence of that is that he has no interest of his own in either the capital or the income of that share during his minority but, in order to provide for such inconvenience as might arise from the fact that he is only contingently entitled to the corpus and, therefore, only contingently entitled to income, the testator provides that the trustees are to have power to apply income for maintenance during the minority and to accumulate the residue, holding the accumulations in trust for the person who may ultimately become entitled to the corpus.

That was the position of things then under the will of Baron de Stern, and if nothing else had happened the present Appellant as a son of his father, who had been a son of the testator, would have been entitled contingently only on attaining the age of twenty-one years to a share of that part of the grandfather's property which had been held in trust for his father. But Lord Michelham himself made a will by which he exercised the power of appointment, and it is under that will that the real question arises. That will was dated 27th December, 1918, and at that time the present Appellant was a boy of about fifteen years of age. The material part of this testator's will is contained in paragraph 5 on pages 31, 32 and 33 of the Appendix. First he recites in full the power that he had under his father's will, and then he proceeds: " Now in exercise of the said power for this purpose given to me " by the said Will and Codicils of my said father . . . . . I DO " HEREBY APPOINT AND DIRECT that all and singular the trust

(Lord Warrington of Clyffe.)

" funds and property held upon the trusts of the said Will and " Codicils of my said father as aforesaid and the trust premises " from time to time representing the same shall from and after " my decease remain and be and that the Trustees or Trustee for " the time being of the said Will and Codicils of my said father " shall stand possessed thereof upon the trusts hereinafter declared " concerning the same ". He intends to execute the power in his father's will to the very farthest extent, and he says they are to divide the premises into as many shares as he shall have children who survive, and appropriate one of the shares to each such child who shall survive, and, leaving out immaterial words, so that the said respective shares shall be held by the trustees or trustee " Upon the trusts hereinafter declared concerning the same that " is to say the said Trustees or Trustee shall hold the share " appropriated to each respective child of mine as aforesaid Upon " trust that the said Trustees or Trustee shall if no act or event " as there described happens " and if such my child shall be living " at the time of my death pay the income of such share to such " my child for the period of twenty years from the time of my " death "—a plain direction, therefore, to pay the income of the share to that child for the period of twenty years from his death. Then, if at the expiration of the twenty years the child is living and no such events as before mentioned have happened, the trustees are to transfer the share to the child's absolute use and benefit. I need not read any more, because there is a great deal more of it which is not material to the question now for decision. There is only one other clause which I think it is desirable to refer to, and that is the declaration which is printed on page 33 of the Appendix. " I Declare that in case such my child shall by reason of his or " her death in my lifetime or before the expiration of the said " period of twenty years or of any act or event as aforesaid fail " to attain a vested interest in the corpus or capital of such my " child's share and shall not have any child who shall attain a " vested interest therein under the trusts hereinbefore declared " then the share of such my child and the income thereof or so " much thereof as shall not have been applied or disposed of under " the trusts or powers vested in the said Trustees or Trustee " together with all accretions thereto by virtue of this present " clause or proviso shall in the case of such my child dying in " my lifetime " go over and accrue by way of addition to the other shares.

My Lords, I think the simple question here is whether, on the true construction of this will, there is anything to cut down the clear effect of the original trusts of the income in favour of the child in question, and the only provision that has been referred to as being inconsistent with that view is, I think, that provision on

(Lord Warrington of Clyffe.)

page 33 of the Appendix which I have just read. In my opinion, that provision does not in any way refer to the income which has been accruing during the life of the child and during the twenty years. That income has, to use the testator's own words, been already disposed of under the trusts aforesaid; he has made a complete disposition of it by directing the trustees of his father's will to pay it to the son.

It has been suggested that, in some way, a little difficult to understand, the trust for accumulation contained in the original testator's will has taken effect. My Lords, I do not think it has, I think what has happened is this: This income being much too large for the maintenance of the boy, it was necessary to obtain some directions with regard to the amount which could be properly applied for his maintenance. Those directions were obtained, and the Order of Mr. Justice Eve was made which provided for the application of £5,000 a year for his maintenance. Then the trustees of the will, not being able to obtain from the minor a receipt for the rest of the income, retained it in their hands and have done that which it would be their duty in any case to do, namely, invested it and accumulated it, and it is that fund with regard to which the question arises. It seems to me that fund has arisen from money which was the absolute property of the Appellant subject to no contingency or condition whatsoever. In my opinion, therefore, the decision of the Court of Appeal is correct, and this appeal ought to be dismissed with costs.

Lord Atkin.—My Lords, I agree.

Viscount Dunedin.—My Lords, I preferred in this case that the leading opinion should be given by a noble Lord who can boast of what I cannot boast of, namely, a life-long acquaintance with English conveyancing. But, exercising what I may call an independent judgment, I have not the slightest doubt that the judgment of the Court below is right. Once you find there was a power of appointment in Baron Michelham, and then you find, on page 22 of the Appendix, there is an appointment to the child, which has been admitted by the Appellant is an absolute appointment of the income of the share, it seems to me impossible to cut that down by the Clause that is found upon page 33, at letter D. That clause seems to be perfectly explainable; it is providing for the case where the child dies before the expiration of the twenty years and fails to attain a vested interest in the corpus, and then it says: " the " share of such my child and the income thereof or so much thereof " as shall not have been applied or disposed of " shall go in a certain way. It is argued that that mention of income shows that what would have been thought to be an absolute appropriation of income was not. It seems to me the words are perfectly simple,

(Viscount Dunedin.)

because here the " income thereof " has been disposed of by the clause that went before, and that clearly, I think, ends the case.

Questions Put:

That the Order complained of be reversed.

The Not Contents have it.

That the Order appealed from be affirmed, and this Appeal dismissed with costs.

The Contents have it.

[Solicitors :—Messrs. Michael Abrahams, Sons & Co.; the Solicitor of Inland Revenue.]