I have no doubt that Charles John Burnett was a fiar, although subject to certain limitations upon his powers as fiar. If that be so, it solves the question before us, because it follows that Mary Erskine Burnett and Stuart Moubray Burnett never took a vested right to the property at all.

The claimants to the property, whose respective rights this case has been brought to determine, are on the one hand the heirs of Mary Erskine Burnett and Stuart Moubray Burnett, and upon the other hand their testamentary assignees. The right under which both of these sets of claimants claim is, as I have said, a destination-over to the heirs and assignees whomsoever of Mary Erskine Burnett and Stuart Moubray Burnett. Now if I am right in holding that no right vested in Mary Erskine Burnett or Stuart Moubray Burnett, then the parties entitled to the property, whether heirs or assignees, must take it in their own right by virtue of the destination-over in the disposition, not as in succession to Mary Burnett and Stuart Burnett. That being so, I have no doubt that the heirs are entitled to succeed in exclusion of the assignees, because it is well settled that the word "assignees" does not mean nominees; it means the persons to whom a right has been assigned, and a right cannot be assigned unless the assignor had that right vested in him; so that the assignees are in my opinion plainly excluded, and the heirs take in their own right as nominated conditional institutes in the disposition.

Accordingly I am of opinion that the first question should be answered in the negative and the second question in the affirmative.

LORD ARDWALL—I agree entirely with the opinion which my brother Lord Low has delivered, and I have nothing to add.

LORD DUNDAS—I concur.

LORD JUSTICE-CLERK—That is my opinion also.

The Court answered the first question in the negative and the second in the affirmative.

Counsel for the First and Second Parties — A. M. Mackay. Agents — Dalgleish, Dobbie, & Company, S.S.C.

Counsel for the Third Parties—A. R. Brown. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Tuesday, December 1.

SECOND DIVISION.

(SINGLE BILLS.)

SERRELLS *v.* SERRELLS.

Poor's Roll—Admission—Declaration and Certificate of Poverty—Scottish Soldier Stationed in England—Remit to Regimental Chaplain.

A private soldier, who had a Scottish domicile, but was resident with his regiment in England, applied for admission to the poor's roll. The Court *remitted* to the chaplain for the time being ministering to the regiment to take the applicant's declaration of poverty, and, if so advised, to grant him a certificate of poverty in usual form.

The Act of Sederunt of 21st December 1842, sec. 2, enacts—"That no person shall be entitled to the benefit of the poor's roll unless he shall produce a certificate under the hands of the minister and two elders of the parish where such poor person resides, setting forth his or her circumstances according to a formula hereto annexed (Schedule A)."

David Farquhar Serrells, driver in the Royal Field Artillery (No. 147th Battery), stationed at Aldershot, England, presented to the Lord Justice-Clerk a note stating —"The said David Farquhar Serrells is a domiciled Scotsman, and is desirous of applying for the benefit of the poor's roll for the purpose of raising an action in the Court of Session against his wife Mrs Catherine Clapperton or Serrells, residing at No. 60 High Riggs, Edinburgh. He is and expects to be for an indefinite period at Aldershot, where his regiment is stationed. On that account he cannot obtain the usual certificate of poverty from the minister and elders of a Scottish parish required by the Act of Sederunt of 21st December 1842. He desires to make a declaration of poverty before the chaplain of his regiment or any other suitable person. May it therefore please your Lordship to move the Court to remit to the chaplain for the time being ministering to the Royal Field Artillery to receive the said David Farquhar Serrells' declaration of poverty, and, if so advised, to grant him a certificate of poverty in usual form. . . ."

Counsel for the petitioner, in moving the Court to grant the prayer of the note, cited in support of the motion *Forrest*, 1907 S.C. 435, 44 S.L.R. 315.

The petitioner's wife opposed the motion, and argued that if the declaration were allowed to be made in England she would thereby, as she had no means, lose the opportunity of objecting to it which the Act of Sederunt, sec. 4, contemplated she should have.

LORD JUSTICE-CLERK—If the respondent has any questions which she desires to put to the applicant on the subject of his poverty, they can be forwarded to the chaplain who is to take the declaration.

LORD LOW, LORD ARDWALL, and LORD DUNDAS concurred.

The Court granted the prayer of the note.

Counsel for the Petitioner—J. H. Henderson. Agent—W. K. Lyon, W.S.

Counsel for the Respondent—F. C. Thomson. Agent—Peter Weir, S.S.C.

Tuesday, December 1.

SECOND DIVISION.

MENZIES' TRUSTEES *v.* BLACK'S TRUSTEES AND OTHERS.

Partnership — Deceasing Partner — Agreement to Pay Annuity to Widow of Deceasing Partner for a Period — Dissolution of Partnership before Expiration of Period.

A, B, & C, the partners of a law firm, executed a memorandum of agreement, which, *inter alia*, provided that in the event of the death of any of them leaving a widow, there should be paid to her a certain annual allowance for a period of five years. In the case of A's widow it provided that "if the party or parties carrying on the business retain" a certain agency she should receive an additional sum. A died leaving a widow and survived by B and C, who after A's death, and before the expiry of the five years dissolved partnership for reasons unconnected with the payment of the annuity.

Held, in a Special Case, that the right to the annual allowance terminated wholly on the dissolution of the partnership.

Question what the effect on the obligation to pay would have been if B and C had dissolved partnership in order to get rid of the annuity.

Alan Lockhart Menzies, W.S., Edinburgh, and others, trustees of the late Sir William John Menzies, W.S., Edinburgh (*first parties*); George Lewis Aitken, solicitor, Kirkcaldy, and others, trustees of the late A. W. Black, W.S., Edinburgh (*second parties*); the said A. L. Menzies as an individual (*third party*); and Dame Annie Percival Drought or Menzies, Canaan House, Edinburgh, widow of the said Sir W. J. Menzies (*fourth party*), brought a Special Case as to the fourth party's right to payment of an annuity under the memorandum of agreement after mentioned.

The memorandum of agreement, which was headed "Memorandum of Basis of Distribution of Profits of Menzies, Black, & Menzies, W.S., 25th January 1898," after providing for the division of profits of the business among the partners, continued as follows—"In the event of any of the partners dying or becoming incapacitated from active business, there shall be paid to such partner, or his widow if she survives him, the following allowances for a period of five years after such death or incapacity, but no longer—W. J. Menzies, or his widow, three hundred pounds annually, and if the party or parties carrying on the business retain the agency of the Church of Scotland, with the agency of the committees thereof, a further some of one hundred and fifty pounds annually. . . ."

The late Sir William John Menzies died at Edinburgh on 14th October 1905, and was at the time of his death senior partner of the firm of Messrs Menzies, Black, & Menzies, W.S., Edinburgh, the other partners then being the late Alexander William Black, W.S., and Alan Lockhart Menzies, W.S., Sir William John Menzies' eldest son. No formal deed of copartnery was executed by the partners. The partnership was terminable at will. Sir William John Menzies held the office of agent of the Church of Scotland, and of the committees thereof, the emoluments being credited to the partnership, and on his death his son, the said A. L. Menzies, was appointed agent. After the death of Sir William John Menzies the surviving partners, the said A. W. Black and A. L. Menzies, continued to carry on the business under the old firm name of Menzies, Black, & Menzies, and on the basis of an equal division of profits after debiting the allowance to Lady Menzies, but without executing any fresh memorandum as to division of profits or otherwise. This arrangement continued until 17th February 1906, when the firm was dissolved by mutual consent, but for reasons which the parties admitted had nothing to do with the allowance to Lady Menzies. From 17th February to 24th March 1906 the said A. W. Black and A. L. Menzies each conducted his own business in the old firm's office but kept separate books. They agreed that the profits earned by each during said period from 17th February to 24th March 1906 should be credited to a joint balance-sheet, and after debiting the allowance due to Lady Menzies down to 24th March 1906, be divided equally between them. This was accordingly done. On 24th March 1906 the said A. L. Menzies removed from the old firm's office, and from that date the business of each was distinct and separate. The said A. W. Black removed from the old firm's office on 26th May 1906. He died on 29th December 1906. In accordance with the arrangement in the memorandum the said A. W. Black and A. L. Menzies, the surviving partners, paid to Lady Menzies an allowance at the rate of £450 per annum from 14th October 1905 (the date of Sir W. J. Menzies' death) to 24th March 1906 (the date of the final dissolution of the copartnery), when they ceased to pay said allowance on the ground that the obligation to provide such an allowance was only binding upon them so long as they continued to carry on the firm of Menzies, Black, & Menzies. Parties to the case admitted that the said Alexander William Black and Alan Lockhart Menzies were entitled to dissolve their copartnery at any time, and that the dissolution of