meeting shall deliver to the owner, agent, or manager of the mine a declaration to the effect that he presided at the meeting, and that the person named in the declaration was duly appointed by that meeting. The declaration may state either that the appointment was made by a majority ascertained by ballot, or that the appointment was made by the persons whose names are stated in the declaration. The authority for the appointment is, in either case, derived from the meeting, and the *prima facie* evidence of the appointment is the statutory declaration. Section 3 deals with the notices to be given of the intention to appoint and the facilities to be given for recording votes. Questions are raised in the case upon this, but in the view I take it is not necessary to consider them.

What happened was that on 13th May 1915 there was a meeting of the men of Viewpark Colliery when by a majority of those present it was decided to appoint a checker, *i.e.*, a timechecker. The respondent was then nominated and was the only nominee. The minute of the meeting then bears—"it was decided that a ballot for or against be taken on Monday May 17th." It was decided that three men were to take the ballot. The ballot was taken and resulted in 336 voting for the respondent and 132 against. What purports to be the declaration in terms of the Act of 1905 is in the following terms—"I, Allan Roy, residing at 4 Crofthead Street, Uddingston, do solemnly and sincerely declare that I presided at a meeting, duly convened, of the workmen employed in the mine known as Viewpark Colliery, situated at Uddingston, and which meeting was held on the 13th day of May 1915, in Hotel Hall at Uddingston, and was called for the purpose of appointing a checker for said mine, and by a majority ascertained by ballot of the persons employed in said mine, Thomas Sullivan, residing at 4 Crofthead Street, Uddingston, was duly appointed checker for said mine, all in terms of the Coal Mines Regulation Acts, 1897 to 1905, 1911. And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835. ALLAN ROY. Declared at Uddingston before me, James Hamilton, one of His Majesty's Justices of the Peace for the county of Lanark, this 17th day of May 1915." The criticisms upon this are that the respondent was not appointed on 13th May nor at any subsequent meeting. There was no ballot on 13th May, nor are the names of the persons by whom he is said to have been appointed stated in the declaration, The meeting on 13th May resolved to hold a ballot, but the result of this required to be reported to a subsequent meeting, if I am correct in my interpretation of the statute. This was never done, and the consequence is that the respondent has never been validly appointed. I therefore agree with the conclusion the Lord Ordinary has reached.

LORD SKERRINGTON—It would not have occurred to me, I confess, that there was anything substantially wrong either in the statutory declaration or in the procedure by which this man claims to have been appointed to the office of timechecker at Viewpark Colliery. But, as your Lordships are unanimous in taking a different view, I do not think it would serve any good purpose for me to state my reasons.

The one important thing is that workmen in mines should know the procedure which they ought to follow in order to make an effectual appointment, and I assume that they will have no difficulty in following the course which your Lordships have pointed out.

The Court varied the interlocutor of the Lord Ordinary by adding thereto after the words "Viewpark Colliery" the words "so long as the respondent does not hold any valid appointment as timechecker at said colliery."

Counsel for the Complainers (Respondents) — Horne, K.C. — D. Jamieson. Agents — Drummond & Reid, W.S.

Counsel for the Respondent (Reclaimer)— Moncrieff, K.C.—Burnet. Agents—Simpson & Marwick, W.S.

Friday, June 9.

SECOND DIVISION.

MORISON *v.* KIDD.

Landlord and Tenant — Small Holder — Small Landholders (Scotland) Act 1911 (1 *and* 2 *Geo. V, cap.* 49), *sec.* 2 (1) (*ii*) *and* (*iii*) *proviso, and sec.* 21—"*Predecessor in the Same Family*"—*Assignation.*

In a proviso to section 2 (1) (ii) and (iii) of the Small Landholders (Scotland) Act 1911 it is provided that a tenant from year to year or a leaseholder shall be held an existing yearly tenant or qualified leaseholder where such tenant or leaseholder or "his predecessor in the same family" has provided or paid for the whole or the greater part of the buildings or other permanent improvements on the holding.

Held (1) that neither a father-in-law nor a brother-in-law could be a predecessor "in the same family," and (2) that an assignation by them was of no effect in this matter.

The Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49), sec. 2, which enacts who are to be landholders, contains regarding (1), (ii), and (iii), which deal with the tenants who are eligible, the following proviso —"(*a*) Provided that such tenant from year to year or leaseholder (*a*) shall (unless disqualified under section 26 of this Act) be held an existing yearly tenant or a qualified leaseholder within the meaning of this section in every case where it is agreed between the landlord and tenant or leaseholder, or in the event of dispute, proved to the satisfaction of the Land Court, that such tenant or leaseholder, or his predecessor in the same family, has provided or paid for the whole or the greater part of the buildings

or other permanent improvements on the holding without receiving from the landlord or any predecessor in title payment or fair consideration therefor. . . ." Section 2—"In the Landholders Acts the word 'landholder' means and includes . . . every existing yearly tenant, every qualified leaseholder. . . ." Section 21—"In the event of a landholder being unable to work his holding through illness, old age, or infirmity, he may apply to the Land Court for leave to assign his holding to a member of his family, being his wife or any person who, failing nearer heirs, would succeed him in the case of intestacy, and if, after intimation to the landlord and any other party interested, and such hearing or inquiry as the Land Court may consider necessary, it appears to the Land Court that such assignment would be reasonable and proper, it shall be competent to the Land Court to grant such leave on such terms and conditions, if any, as may to them seem fit."

Alexander Edward Forbes Morison of Bognie, *appellant*, brought a Special Case appealing from a decision of the Scottish Land Court in an application by William Kidd, Upper Rasbieslack, Ythanwells, by Insch, *respondent*, for an order or orders (1) finding and declaring that he, the respondent, was and had been from and after 1st April 1912 (or other date) a landholder in and of the holding possessed by him and held from year to year at the said date, and (2) fixing a first fair rent for the said holding.

The Case stated—". . . 2. The application was heard and evidence taken at Aberdeen on the 13th March 1913. It was objected for the proprietor (1) that the greater part of the buildings and other permanent improvements on this holding had been provided or paid for by the proprietor and not by the applicant or any predecessor in the tenancy of the said holding; (2) that the tenants who preceded the applicant in the tenancy of the holding, namely, William Bannerman and John Bannerman, were not predecessors of the applicant 'in the same family,' and therefore that no buildings or other permanent improvements provided or paid for by them could be taken into account in favour of the tenant in determining whether the applicant was or was not a landholder. . . .

"4. It was proved to the satisfaction of the Land Court (i) that the greater part of the existing buildings and other permanent improvements on this holding, after taking into account the value of the expenditure of £90, 4s. specified in article 5, had been provided or paid for by (1) William Bannerman, who was the first tenant of this holding as a separate holding, and held it from 1850 or earlier until Whitsunday 1888; (2) John Bannerman, a son of the said William Bannerman, who succeeded his said father in the tenancy of this holding as at Whitsunday 1888, under a lease for nineteen years from the said term, dated 20th January and 25th April 1890; and (3) the applicant William Kidd, who succeeded John Bannerman in the said tenancy as assignee, with consent of the then proprietor, of the said John Bannerman as from and after Whitsunday 1902 under the after-mentioned assignation dated 21st January and 12th February 1902. The applicant continued to possess the said holding until the expiry of the term of the said lease at Whitsunday 1907, and thereafter continued to possess the said holding as resident and cultivating tenant from year to year, and did so possess it at the date when the Small Landholders Act of 1911 came into force—1st April 1912. (ii) That no payment or fair consideration had been received by the said tenants or any of them therefor from the proprietor or any predecessor in title of the proprietor.

"5. It was proved to the satisfaction of the Land Court that the then proprietor had at the entry of the said John Bannerman expended a sum of £90, 4s. on repairs and alterations upon the steading of the said holding, and that the tenant had at his own expense done the mason work and performed all cartages of materials in connection with the said repairs and alterations at his own expense. The said lease in favour of John Bannerman, dated 20th January and 25th April 1890, contained a clause in the following terms:—'(*Third*) The proprietor having at the entry of the tenant expended a sum of £90, 4s. on repairs and alterations upon the steading of offices on said farm, the tenant having done the mason work and performed all cartages of materials in connection with said repairs and alterations, the whole buildings on the farm, which with the fences belong to the proprietor, are hereby handed over to the tenant and accepted of by him as suitable and sufficient for the farm, and as in good tenantable order and repair, and he shall be bound to uphold and maintain the same in the like good tenantable order and repair at his own expense during the lease and leave them in that condition at his removal, but it is hereby expressly provided and declared that the tenant will have no claim at his removal against the proprietor for meliorations on houses or otherwise.'

"6. It was proved that the said William Kidd, when he entered on the tenancy of this holding, was son-in-law of the said William Bannerman and brother-in-law of the said John Bannerman.

"7. By the said assignation dated 21st January and 12th February 1902 the said John Bannerman, with the consent of the then proprietor, assigned to the respondent and his heirs all the cedent's right and interest in and to the said lease from and after the term of Whitsunday 1902, surrogating and substituting the respondent and his foresaids in the said John Bannerman's full right and place in the premises, with full power to him and them to do everything requisite and necessary concerning the premises which the said John Bannerman could have done himself before granting thereof.

"8. It was not proved that the permanent improvements provided or paid by the said William Kidd during his tenancy amounted to the greater part of the buildings and other permanent improvements on the holding. If the buildings and other permanent improvements provided or paid for

by the said William Bannerman and John Bannerman ought to have been excluded from consideration the said William Kidd is not a landholder, but a tenant subject to the provisions of section 32 of the Small Landholders Act of 1911 relating to statutory small tenants. . . .

The order of the Land Court was—"*Edinburgh, 25th November* 1913.—The Land Court having inspected the holding and resumed consideration of the application and of the evidence adduced, Repel the objections stated to the application by the respondent, and find and declare that the applicant is a landholder within the meaning of the Small Landholders Acts 1886-1911; and having considered all the circumstances of the case, holding and district, including any permanent or unexhausted improvements on the holding and suitable thereto, executed or paid for by the applicant or his predecessors in the same family, have determined, and do hereby fix and determine, that the fair rent of the holding is the annual sum of £25 sterling; Find no expenses due to or by either party."

The *note* appended to the *order*, *inter alia*, stated—"But it is maintained that the applicant cannot claim the benefit of any improvements executed or paid for by his father-in-law and brother-in-law who preceded him in the tenancy, because on a sound construction of the Acts 1886-1911 they are not his 'predecessors in the same family.' For the reasons assigned in the case of George Taylor, R.N. (Aberdeen) [7 Scottish Land Court Reports, *Taylor* v. *Seaton*, vol. ii, part 3, p. 26], we think that the words 'in the same family' should receive a liberal construction, and that the applicant is for the purposes of section 6 (1) of the Act of 1886 and section 2 (1) of the Act of 1911 a member of the same family with his father-in-law, and therefore also with the son of his father-in-law who preceded him in the tenancy of this holding. But there is a separate ground in the present case on which we think that the applicant is entitled to the benefit of their permanent improvements for the purposes of these sections. By the assignation of 12th February 1902 the applicant was, by the landlord and the then tenant John Bannerman, his brother-in-law, surrogated and substituted in place of John Bannerman from and after Whitsunday 1902—*assignatus utitur jure auctoris*. It seems to follow that in rights, benefits, or obligations relating to or arising out of the tenancy of the holding, whether conferred by common law, contract or statute, the applicant stands in no worse position than John Bannerman would have stood in if he had been the applicant."

The *questions of law* were, *inter alia*—"2. Whether any buildings or other permanent improvements provided or paid for by William Kidd's said father-in-law and said mother-in-law were provided or paid for by William Kidd's 'predecessors in the same family' within the meaning of section 2 (1) of the Small Landholders (Scotland) Act 1911? 3. Whether by virtue of the said assignation the said William Kidd acquired any right, title, or interest in the permanent improvements provided or paid for by his said predecessors in the tenancy of this holding, or by either of them, for the purpose of determining whether the said William Kidd is a landholder of and in the said holding under section 2 (1) of the Small Landholders Act, 1911?"

Argued for the appellant—Brothers were of the same family, but not cousins—*M'Lean* v. *M'Lean*, 1891, 18 R. 885, 28 S.L.R. 698. According to the Crofters' Holdings (Scotland) Act 1886 (49 and 50 Vict. 29), sec. 16, a crofter could not bequeath anything to his maternal cousin, who was not to be regarded as a member of the same family—*Mackenzie* v. *Cameron*, 1894, 21 R. 427, 31 S.L.R. 347. The Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49), sec. 21, showed that a son-in-law as an assignee could not be considered in this matter. Family relation could not be brought about by assignation. A man could not invoke an assignation as giving him any rights which were only conferred by statute as a member of a family. Submitted that the Land Court had erred here, and that question 2 should be answered in the negative, as also question 3.

The respondent did not appear.

LORD JUSTICE-CLERK—The second question raises this sharp point, namely, whether in the sense of the first proviso of sub-section (3) of section 2 of the Small Landholders Act 1911, the father-in-law or the brother-in-law of a landholder is a predecessor in the same family. Now I am doubtful whether the word "predecessor" can be read as equivalent to "predecessors;" for if this were so the singular result would follow in this case that the family of the father-in-law and the family of the brother-in-law were one and the same; and this result appears to me to be quite out of the question. But be this as it may, I do not find any justification for the view that in the ordinary sense of the word "family," or in the sense in which it is used in the proviso, a son-in-law can be said to belong to the same family as either his brother-in-law or his father-in-law. There is no argument employed in the Special Case which can be held to justify such a wide extension of the meaning of the term "the same family" as that to which the Land Court has given effect, and there is no authority which can be cited as supporting that extension of its meaning. Accordingly in my opinion the argument to which the Land Court refers as having been developed in the case of *Taylor*, decided by that Court a year or two ago, fails. That decision proceeds to a very large extent upon an interpretation of certain words in the Crofters Act of 1886, but that, in my opinion, is not a relevant consideration in interpreting the term "family" in the Act of 1911; and so far as the interpretation proceeds upon the consideration of the Act of 1911 I do not agree with it. The 21st section of the Act of 1911 appears to me to tell very much against the view that a son-in-law is to be held as being of the same family as

his father-in-law or his brother-in-law. It refers to a landholder's family as "being his wife or any person who, failing nearer heirs, would succeed him in the case of intestacy." I am of opinion that we should answer the second question in the negative.

The third question is one of which we are also in a position to dispose. It is whether by assignation the assignee of a croft can be put in possession of the right in the improvements made by the assignor so as to bring the assignee within the scope of section 2 (1) (iii). The rights of assignation given to a landholder are regulated by section 21 of the Act of 1911, and it seems to me that they clearly result in this, that a voluntary assignation to a brother-in-law is not enough to bring him within the terms of that section, in which the power of assignation is limited to an assignation "to a member of his family, being his wife or any person who, failing nearer heirs, would succeed him in the case of intestacy." In my opinion a voluntary assignation cannot be held as conferring upon the assignee rights which under the statute he can have only if he derives from those who belong to the same family as himself. I am therefore of opinion that the third question should also be answered in the negative.

LORD DUNDAS—I agree that the questions in this case should be answered in the manner which your Lordship has proposed, and for the reasons which your Lordship has stated.

LORD SALVESEN—I am also of the same opinion. I think it is usually unfortunate when a case is presented only by one party, but we have been referred by Mr Macmillan with great fulness to the views expressed by the Land Court, not only in this case but also in the case of *Taylor*, decided in that Court, in support of the judgment at which they have arrived here. I do not think any conceivable argument, good or bad, has been omitted by the Land Court in reaching the result recorded. Most of the arguments adduced in *Taylor's* case by the Land Court seem to me absolutely fallacious, and an appeal to another statute—which has difficulties of interpretation of its own in plenty—has no relevancy whatever in interpreting the language of this particular statute. I think the question here is quite a clear one. A man is not a member of two families—his own family and his wife's family. He is a member of one family only; and the "predecessor" who is referred to must be a member of his own family. I think that view is, as your Lordship has said, very strongly supported by section 21, where somewhat similar language is defined as including the wife, but otherwise including only those who in default of legal heirs would be entitled to succeed by virtue of intestacy. That description of course does not include a member of a wife's family.

Reference was made in the note appended to *Taylor's* case to the idea of recompense. If that idea is introduced it only makes it all the more plain that a son-in-law has no claim of recompense in respect of improvements executed by his father-in-law, and still less in respect of improvements executed by his brother-in-law; and yet the Land Court have included improvements both by the brother-in-law and by the father-in-law in order to reach the result that the *cumulo* value of the improvements brought this man within the scope of the Act.

On the third question I agree entirely with what your Lordship in the chair has said. It seems to me to be almost too clear for argument that a man cannot assign a privilege which is conferred by statute upon a limited class to which the assignee does not belong.

LORD GUTHRIE—I agree. On the second question there are two reasons which justify Mr Macmillan's contention that the Land Court has gone wrong. In the first place the statute refers to "his predecessor in the same family." The Land Court may have gone wrong in the view they took by misquoting the section. They seem not to have noticed the importance of the use of the singular number, because in the note they quote it thus—"predecessors in the same family." It seems to me that only one predecessor is meant, and that the statute says so. Further, even if you take the brother-in-law as the predecessor it is admitted that unless you include the father-in-law's improvements in the computation there is no case for declaring the applicant a landholder.

In the second place, suppose the father-in-law and the brother-in-law are reckoned in the category of predecessor, the Act says they must be members of the same family as the landholder. "Family" certainly primarily refers to a blood relationship where you have mutual rights and obligations in the way of aliment and succession. It is said by the Land Court that the words should receive a liberal construction. That may be quite sound in certain circumstances. It may be that although the wife is not a blood relation if she had happened to be the predecessor before marriage she might on a liberal construction of the term "family" have been included, because in the eye of the law and in popular language, whatever the fact be in the particular case, she leaves her own family and enters her husband's family. But in no sense can a man be said to be a member of the family of his father-in-law or of his brother-in-law. That is perfectly clear in law, in equity, and in good sense. The reasons, which are quite intelligible and indeed very strong in the case of true members of a family, do not apply to a case in which the two persons have neither rights nor obligations *inter se*.

The Court answered the second and third questions stated both in the negative.

Counsel for the Appellant — Macmillan, K.C. — MacRobert. Agent — Alex. Ross, S.S.C.