fact, and until that is done the right to possess continues. Now the question is, Is this a case for summary ejection? To warrant that the possession must either be vicious possession, that is, obtained by fraud or force, or precarious possession, *i.e.*, without a title. Now, in this case there is neither. There is no question of vicious possession. A precarious possessor is a possessor by tolerance merely. But the power is here in virtue of ownership, and under the rules of the society. The law on this is very clearly settled, and I may refer to the case of *Halley* v. *Lang*, the rubric of which is—"A petition for summary ejection which contained no allegation of vicious or precarious possession without title held incompetent." I need not quote more than the opinion of Lord Deas, who says—"The first ground on which we must dismiss this petition is that there is not set forth here any such ground of action as acoording to the form of process in the Sheriff Court will warrant an ejection. An ejection is only competent when a party is either a vicious possessor or a precarious possessor in the sense of having no title at all." I am therefore of opinion that this petition stands properly dismissed.

Lord Deas—I should have some difficulty in proceeding on my own opinion in the case of *Halley* v. *Lang*, in so far as I think that opinion seems to proceed a good deal on the action being in the Sheriff Court. Now, in this case I do not see any clear objection to the jurisdiction of the Sheriff or to the action proceeding in the Sheriff Court if otherwise competent. The jurisdiction of the Sheriff is now extended to questions of heritable right relating to subjects of not greater value than £1000. Now this question is about property of the value of £30 per annum, and therefore presumably of not greater value than £1000. I am therefore disposed to view this case in the same light as if it applied to some objection brought in this Court. I think the action is ruled to be incompetent in the case of *Wyllie*—I mean incompetent on principle. A warrant of ejection is not a decree but a diligence. Now, the question arises whether private parties can make rules for themselves applicable to diligence quite different from those of ordinary law. If that were so, they might make rules of diligence quite injurious to the interests of all the other creditors. And under its rules this society may, without any warning whatever, enter into the possession of the gentleman's property. Now, that is quite inconsistent with the ordinary rules of law. These principles are fully explained in the case of *Wyllie*—that no private parties are entitled to make rules applicable to diligence which cut out all the other creditors.

Lord Mure—The nature of this action is an ejection of the more summary kind known to law, just as in the case of *Halley*. I am of opinion with your Lordships that the forfeiture requires to be established. There are certain circumstances in which it is provided that the society may enter on the possession, and these circumstances must be shown to have taken place. I concur with your Lordship in putting my opinion on the case of *Halley*.

Lord Shand was absent.

The petition was accordingly dismissed.

Counsel for Pursuers (Appellants) — Keir Agents—Auld & Macdonald, W.S.

Counsel for Defender (Respondent)—Strachan. Agent—Peter Douglas, S.S.C.

Wednesday, June 1.

SECOND DIVISION.

[Sheriff Court of Dumfries and Galloway.

RANKINE *v.* M'CLURE.

Parent and Child—Filiation.

In this action of filiation and aliment, which was raised in the Sheriff Court of Dumfries and Galloway at the instance of Annie Rankine, residing at Barnbarroch, Wigtown, against William M'Clure, a farmer there, the Sheriff (Rhind) after proof found the facts and circumstances proved sufficient to establish that the defender was the father of her child. To this judgment the Court on appeal adhered.

Counsel for Appellant — Nevay — Gibson. Agent—William Officer, S.S.C.

Counsel for Respondent—J. A. Reid—Vary Campbell. Agents—Maitland & Lyon, W.S.

Thursday, June 2.

SECOND DIVISION.

SPECIAL CASE—FRENCH.

Succession—Trust—Vesting—Nati et nascituri.

A truster left a liferent of his estate to his widow, and further provided that after her death it should be sold and the price divided in certain proportions between the children "born or to be born" of his only daughter. *Held* that the shares vested in the children at the death of the liferentrix.

Richard French died on 3d November 1873 survived by his widow and a married daughter. In a trust-disposition and settlement he directed his trustees, *inter alia*, to pay over to his wife the rents of his whole estate for her liferent use allenarly, and secondly, "after the death of my spouse" to value the said estate and sell it to his grandson Richard Torrance French, and then to divide the price thereof so that a double share should be paid to him, and the remainder be divided equally amongst his other grandchildren "born or to be born of my said daughter." His widow died on 14th July 1877, and his daughter Mrs French had a family of seven children, of whom the said Richard Torrance French was the eldest. A dispute having arisen as to whether the period at which the estate was to be divided was to be the death of the widow, the liferentrix, or the death of Mrs French, this Special Case was presented to the Court for opinion and judgment.

The Court were of opinion that as the death of the widow was the date fixed by the truster

in his settlement as the date of division, the children's shares vested at that date.

Counsel for the Parties—Dickson—Vary Campbell. Agents—J. Stewart Gellatly, L.A.—Henry Buchan, S.S.C.

Thursday, June 2.

SECOND DIVISION.

[Sheriff of Caithness, Orkney, and Zetland.

CHRISTISONS *v.* CHRISTISON.

Succession—Executor—Writ.

Terms of writ *held* to constitute a universal legatory, and to entitle the person so favoured to be decerned executor in a competition with the next-of-kin for that office.

Hugh Christison, a shepherd residing at Steenswall, Zetland, died on 27th December 1880 leaving a will in the following terms:—

"October 18 1879 Hugh Christison

this Will I writ with my own free will and acord all siller and stok remaines too the oldest liver Both sard if thir be aney over the wiffes frindes get the third part of it my frindes getes the rest and every thing within the hous of hires and min goes too my frindes both agrabel for this.

"Hugh Christison Sally Christison."

Thereupon competing petitions were presented in the Sheriff Court of Caithness, Orkney, and Zetland by his brothers John and David Christison on the one side, who sought to be decerned executors-dative *qua* next-of-kin to the deceased, and by his widow Sarah Bertie Christison on the other side, who sought that office *qua* general disponee of her deceased spouse under the holograph writ. The Sheriff-Substitute (Rampini) decerned in favour of the brothers *qua* next-of-kin to the deceased. The widow having appealed, the Lords recalled the Sheriff-Substitute's interlocutor, being of opinion that as under the will she was the fiar of the property, she was entitled to be served executrix dative *qua* universal disponee.

Counsel for Appellant — Darling. Agent — Charles S. Taylor, S.S.C.

Counsel for Respondents—Galloway. Agent—Thomas Carmichael, S.S.C.

Thursday, June 2.

SECOND DIVISION.

[Sheriff of Midlothian.

RITCHIE *v.* M'INTOSH.

Bankruptcy—Trust for Creditors—Process—Caution for Expenses.

The Court will not ordain a pursuer who has executed a trust-deed for behoof of his creditors to find caution for expenses in an action of count and reckoning against his trustee.

George M. Ritchie, residing in Leith, presented a petition in the Sheriff Court of Midlothian against Alexander M'Intosh, his trustee under a trust-deed executed for behoof of creditors on 6th April 1878. In it he prayed the Court to ordain the defender to produce a full account of his intromissions as trustee aforesaid, and to pay to him the sum of £800 sterling, or such other sum as should appear to be the true balance due by him.

The defender, *inter alia*, pleaded that the pursuer being insolvent, and having denuded himself of his whole estate, was bound to find caution before proceeding further with the action.

The Sheriff-Principal (Davidson), affirming the Sheriff-Substitute (Hallard), assoilzied the defender, in respect of the pursuer's failure to comply with a previous order of the Court enjoining him to find caution for expenses.

The pursuer appealed, and the defender founded on the cases of *Harvey* v. *Farquhar*, July 12, 1870, 8 Macph. 971; *Horn* v. *Sanderson & Muirhead*, Jan. 9, 1872, 10 Macph. 295, as authorities for the Sheriff's judgment.

At advising—

Lord Justice-Clerk—In the question as it is presented here I see no difficulty whatever, because the trustee is only the creature of his author, from whom he has received the estate. He cannot, therefore, say that by receiving the estate he has so divested his author as to prevent him from suing unless he consents to find caution for the expenses of the action. I am therefore for recalling the judgments brought under review.

Lord Young—I am entirely of the same opinion. I have read the Sheriffs' judgments with something like amazement. They have quite misapprehended the law on the subject. It is according to the practice of this Court not to allow a party who is divested of his property to sue actions except on condition, and not always on condition, of finding caution for the expenses of the action. The reason of this rule of practice is that the person so divested is seeking to recover to himself something included in a conveyance to another. For example, a bankrupt who has been sequestrated, and so completely divested of his estate in favour of his trustee in bankruptcy, has sometimes brought an action saying, "No doubt the trustee is the proper person to bring the action, because the right is vested in him, but he improperly refuses to do so, and I ask leave to bring the action myself." In such a case the Court may or may not allow him to do so, but only on condition of his finding caution for the expenses of the action. This observation, moreover, equally applies in the case of a person who has divested himself by a voluntary trust-deed. But in this case the person divested is suing his own trustee to have him ordained to pay over a balance on his estate, which he says lies in his trustee's hands. Can it be said that such a person's right has been so conveyed away to that trustee that he shall not be entitled to sue the action? If the action is proper, then he, and no one else, is interested in it. The right is in him, and he is seeking to make it good. To say that he is not entitled to do so without finding caution for the expenses is to assert a proposition outwith all authority and good sense.