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