was relevantly averred on record that the defender had resigned his office, and that he had been dismissed. Although he could not be removed as a director, yet he could be dismissed as manager of the company, and it was in that capacity that he had been dismissed. He had the use of the house as part of his emoluments as manager, and his title to the house at once came to an end when he was dismissed from the service of the company. The right of occupancy of a house as incidental to service was a different thing from a tenancy. It was a precarious title, and summary ejection was competent—*Scott* v. *M'Murdo*, Feb. 4, 1869, 6 S.L.R. 301, opinion of Lord Deas, 302; *Whyte* v. *School Board of Haddington*, July 9, 1874, 1 R. 1124; Dove Wilson's Sheriff Court Practice (4th ed.) 485.

Argued for defender—If the averments on record and the facts brought out in the productions were taken into account, it was plain that summary ejection was not a competent process in the present case. There must be a definite and specific allegation of a vicious or precarious title before an action of summary ejection could be held relevant—*Hally* v. *Lang*, June 26, 1867, 5 Macph. 951; *Scottish Property Investment and Building Society* v. *Horne*, May 31, 1881, 8 R. 737; *Robb* v. *Brearton*, July 11, 1895, 22 R. 885. There was no such allegation here. The pursuers could not dismiss the defender, who was the managing director of the company, and possessed the house as such. Directors were not entitled to remove a managing director before the expiry of his period of office—*Imperial Hydropathic Hotel Co., Blackport* v. *Hampson*, 1882, L.R., 23 Ch. D. 1. In view of the disputed legal questions raised in the action, summary ejection was neither a proper nor a competent remedy.

LORD JUSTICE-CLERK—I am of opinion that the interlocutor of the Sheriffs should be adhered to. It does not appear to me that the pursuer has put forward any argument showing that he has a right to a different judgment. Indeed, what has been said has rather tended to confirm my belief that the decision arrived at is sound.

LORD YOUNG and LORD TRAYNER concurred.

LORD MONCREIFF—I am of the same opinion. I think that the process of summary ejection only applies where the title is precarious—either where the person proceeded against never had a title at all, or where he having had a title, it has been brought to an end by a competent Court or in some competent manner.

The Court dismissed the appeal, of new dismissed the action, and decerned.

Counsel for the Pursuers—Ure, Q.C.—Cook. Agents—Dalgleish & Dobbie, W.S.

Counsel for the Defender—Cooper. Agents—Millar, Robson, & M'Lean, W.S.

Wednesday, March 8.

FIRST DIVISION.

[Lord Pearson, Ordinary.

HANDYSIDE AND ANOTHER (HADDEN'S TRUSTEES) *v.* HADDEN AND OTHERS.

Insurance—Policy of Insurance on Life of Son—Proof of Policy being Property of Father.

A life insurance policy payable to his heirs, executors, administrators, and assigns was taken out by a young man eighteen years of age. It passed at once into the keeping of his father, who retained possession of it, and in whose repositories it was found on his death twenty-five years afterwards. The premiums on the policy were paid by the father down to the date of his death, and in his will the father described it as "the policy of insurance belonging to me on the life of my son," and directed the trustees to pay the premiums on it until the son's death.

In a competition between the representatives of the son and the testamentary trustees of the father, *held* (*aff.* judgment of Lord Pearson) that the policy was the property of the father.

Contract—Approbate and Reprobate—Trustee—Power to Compromise.

An insurance policy on the life of his son, and payable to his son's representatives, remained in possession of a father, who paid all the premiums thereon down to his death, and directed his testamentary trustees thereafter to pay the premiums until the son's death. After the testator's death the trustees took an assignation from the son of his interest in the policy, binding themselves at the same time to pay the proceeds of the policy at maturity, less the total amount of premiums paid thereon, to the son's daughter.

In a competition between her and the father's testamentary trustees, who had uplifted the proceeds of the policy and who claimed that these were part of the residue of the father's estate—*held* that the assignation was binding on the trustees, in respect (1) that it was a probative writ, (2) that the transaction with the son was *prima facie* reasonable, inasmuch as he alone could give the trustees an active title to the policy and give security for the repayment of the premiums, and (3) that the trustees had not challenged the deed on record.

Insurance—Void Policy—14 Geo. III. c. 48, sec. 1.

If the insurance company do not choose to plead the Statute 14 Geo. III. c. 48, the question who is is entitled to the proceeds of policy may be determined as if the statute did not exist.

This was an action of multiplepoinding raised by David Handyside and another,

the testamentary trustees of James Hadden, who died on 21st August 1890, with a view to the distribution of the truster's estate. The said estate became divisible upon the death of the truster's widow, which occurred on 29th July 1896.

The facts of the case, as disclosed upon record and by the proof, were as follows:—In 1865 Robert Hadden junior, a son of the truster, and at that time about eighteen years of age, took out a policy of insurance upon his life for the sum of £500. The policy was in the usual form, and bound the insurance company to pay that sum to "the heirs, executors, administrators, or assigns" of Robert Hadden junior. The policy, when taken out, came into and remained in possession of his father James Hadden, and upon his death was found in his repositories. James Hadden paid the premiums upon the policy down to the date of his death.

On 2nd July 1890 James Hadden executed a trust-disposition and settlement, by which he conveyed his whole estate, heritable and moveable, to trustees in trust for certain purposes. By the *second* purpose he directed as follows:—"My trustees shall make payment out of the free income of my estate of the premium necessary to keep in force the policy of insurance belonging to me on the life of my son Robert. (*Third*) On the death of my said wife my trustees shall set aside and invest the sum of £100 . . . for behoof of my granddaughter Margaret Stevenson Hadden, daughter of my son Robert." By the *fourth* purpose he directed his trustees, on the death of his wife, to realise his estate, and divide the same among his family in eight equal shares. He revoked and recalled all previous settlements and testamentary writings.

After James Hadden's death, the trustees continued, as directed by him, to pay the premium on Robert Hadden's policy of insurance, which they retained in their possession. On 26th October 1891 they took from Robert Hadden an assignation of the policy, by acceptance whereof the trustees bound themselves "to make payment of the sum falling due and payable under the said policy, with any bonus additions which may have accrued thereon, to my daughter Margaret Stevenson Hadden, under deduction of the whole premiums paid on the policy from 1865 until the date of the said Robert Hadden's death, and of certain other sums. The assignation proceeded on the narrative that "I have been requested by said trustees to assign to them all my right and interest in said life policy upon the conditions hereinafter written, and that it is just and reasonable that I should do so." Upon Robert Hadden's death on 19th January 1896] the trustees uplifted the sum due under the policy, the net amount of which, after deducting the premiums paid on the policy and other disbursements, was £153, 6s. 3d.

This was the sum at stake in the present action, in which claims were lodged (1) by James Hadden and others, being the family of the truster James Hadden, who claimed to be ranked and preferred to seven-eighths of the residue of the trust-estate, including the proceeds of the policy, and (2) by Robert Hadden's daughter, Mrs Margaret Stevenson Hadden or Bryden, who claimed, *inter alia*, (2) to be ranked and preferred to the surplus of the said policy.

James Hadden and others pleaded—"(2) The said policy of insurance being the property of the said James Hadden, the proceeds thereof fall to be divided as part of the residue of his estate, and the claim by Mrs Bryden to the proceeds of said policy falls to be repelled."

The Act 14 Geo. III., cap. 48, sec. 1, enacts that "no insurance shall be made by any person . . . on the life . . . of any person . . . wherein the person . . . for whose use, benefit, or on whose account such policy . . . shall be made, shall have no interest."

After a proof the Lord Ordinary (PEARSON) on 9th July 1898 found that the policy of insurance was the property of the deceased James Hadden, and that the proceeds thereof fell to be divided as part of the residue of his estate.

Opinion.— . . . "The policy mentioned in the will was effected with the City of Glasgow Life Assurance Company on 2nd November 1865, when Robert was nearly 18 years of age. The proposal was written out and signed by Robert himself, and the policy, which is for £500, is taken in the ordinary form in favour of his heirs, executors, administrators, or assigns. It does not appear that the company knew anyone in the matter except the assured, and accordingly the premium receipts and the bonus notices do not disclose that the father was in any way interested in the policy.

"But the proof establishes that the policy remained throughout in the father's custody, and was kept by him in his desk; and further, that the premiums were throughout paid by him. This, coupled with the father's assertion in his will that the policy belonged to him, appears to me to be sufficient, in the absence of any facts from which it can be inferred that the policy, after being issued to Robert, was handed by him to his father on the footing that the latter was to advance the premiums and to retain the policy in security.

"The claimant Mrs Bryden refers in her claim to another policy of the like amount with the same office on the life of Robert's brother James, and she avers that the two policies are *in pari casu*. If, however, James' policy may be legitimately referred to, as I think it may, it affords a marked contrast to the other one. It was taken out when the assured was 18 years of age, as in the case of his brother, and it remained from the first in the father's custody, he paying the premiums until James' marriage in 1878. But a week or two after that event the father told James he was going to make him a present of the policy as a marriage gift, because he had 'stuck so loyally to him for many years'; and he there and then handed the policy

and the premium receipts to James, adding that he would expect James to keep it up himself for the future. For two years after this James, being short of money, asked his father specially to pay the premium for him. But since 1880 he has kept up the policy himself. Now, the testator made no similar arrangement as to the other policy, and the proof and the terms of the will suggest that he had only too good reason for not doing so. He placed Robert's share of residue under restrictions, and he bequeathed for the behoof of Robert's only child (Mrs Bryden) a sum which (as it happens) covers the surrender value of the policy on Robert's life both at the date of the will and at the testator's death.

"It is contended for Mrs Bryden that since the death of the testator the policy has been dealt with by the trustees on the footing that it belonged not to the testator but to Robert Hadden. In the inventory there is included not the policy but a sum of £362, 3s. 4d., stated as a debt due by Robert Hadden to the father's estate, that being the amount of premiums which the father had paid on this policy. And the value of the debt is stated at £98, 5s., being the surrender value of the policy. Now, that inventory was prepared by the late Mr Wallace, who was one of the trustees and acted as law-agent in the trust. But it cannot now be discovered on what grounds he treated the policy as belonging to Robert Hadden. He may have had good and convincing grounds; he may have known something which, if now available, would have been conclusive on the matter. But as things stand all this is mere conjecture. And the fact which remains, namely, that the trustees, through the law-agent, treated the policy in the inventory as not belonging to the father, is obviously insufficient in itself to solve the present question.

"If the policy was truly the father's, they had no power to change that by asserting that it was the son's. The right to the policy, as far as the father's estate is concerned, must be fixed as at the date of the father's death.

"The same remark may be made on the other contention of the claimant, Mrs Hadden, namely, that in October 1891, more than a year after the father's death, the then trustees took from Robert Hadden an assignation of the policy on the condition that they would keep it up and would pay the net proceeds of it to his daughter Mrs Bryden. She maintains that this deed is conclusive in her favour. But I do not see how it can be so treated in the question whether the policy belonged to the testator at his death. It may be improbable that Mr Wallace and his co-trustees should have so dealt with the policy, unless they were convinced that it belonged to Robert; but the fact that they so dealt with it goes a very little way to show that it did belong to him.

"Then it is urged that if the policy is regarded as having belonged to the testator, it was an illegal contract, and void under the Statute of 14 Geo. III., the testator having had no pecuniary interest in his son's life.

"I am asked to prefer the view which would make it a legal instead of an illegal contract. So far as this plea is urged as affecting the antecedent probability of a father's insuring the life of his son, and keeping the policy as his own, I am not disposed to allow it any weight.

"On the other hand, if it is meant that the father's general representatives cannot vindicate the fruits of the father's illegal contract, I think that is a misapplication of the statute.

"The statute in my view furnishes a defence to the insurance company if they choose to plead it; but 'if they do not, the question who is entitled to the money must be determined as if the statute did not exist.' (Lord Justice Mellish, in *Worthington*, 1875, L.R., 1 C.D. 424.)"

Mrs Bryden reclaimed, and argued—The Lord Ordinary was wrong. The policy was Robert Hadden's. It must be presumed that James Hadden, though he had the policy in his possession from the outset, had no desire to do anything illegal. But under the Act of Geo. III. it would have been illegal for him to take out a policy on his son's life. The terms of the policy itself must be referred to, and they emphatically pointed to Robert's heirs, executors, or assignees as the parties to whom the proceeds of the policy were to be paid—*Dickie's Trustees* v. *Dickie*, March 8, 1892, 29 S.L.R. 908; *Worthington* v. *Curtis*, L.R., 1 Ch. D. 419. The claimant also referred to *Walker's Executor* v. *Walker*, June 19, 1878, 5 R. 965; *Connell's Trustees* v. *Connell's Trustees*, July 16, 1886, 13 R. 1175, and *Paterson's Judicial Factor* v. *Paterson's Trustees*, February 4, 1897, 24 R. 499, as illustrating the effect of a general disposition upon a special destination in a bond or other document. No doubt it was quite competent for James Hadden's family to prove if they could that the policy was the truster's—*Forrester* v. *Robson's Trustees*, June 5, 1875, 2 R. 755; but they had failed to discharge the *onus* that lay upon them. There was no proof how or why the policy had come into the truster's possession, and the natural presumption was that he was merely keeping it for Robert because of Robert's youth at the time when it was taken out. Even assuming that the policy was the property of the truster, the trustees could never have acquired an active title to it without the assignation from Robert, which, moreover, gave them the only security they possessed for the repayment of the premiums. They were not entitled now to repudiate their transaction with him, especially as they had not challenged it on record.

Argued for James Hadden and others—The Lord Ordinary was right. The case must be dealt with apart from the Act of Geo. III. altogether—*Worthington, ut sup.*; and it had been proved that the property was the policy of the truster. He had had possession of it, he had paid the premiums on it, and he had treated it in his settlement as his own property. Delivery would

have been necessary to make the policy Robert's. The general disposition in his will overruled the special destination in the policy, if, indeed, the words there amounted to a proper special destination at all—*Hill* v. *Hill*, 1755, M. 11,580; *Balvaird* v. *Latimer*, December 5, 1816, F.C.; *Jarvie's Trustee* v. *Jarvie's Trustees*, January 28, 1887, 14 R. 411; *Walker* v. *Galbraith*, December 21, 1895, 23 R. 347; *Brydon's Curator Bonis* v. *Brydon's Trustees*, March 8, 1898, 25 R. 708. The truster's settlement contained a clause revoking all previous settlements. As regards the assignation, it could not affect the question as to the right of property in the policy. The trustees were in error in having taken the assignation, but it would not bind them, for the policy was theirs already under the truster's settlement.

LORD PRESIDENT—On the face of the policy in dispute it appears that the contract is between Robert Hadden on the one hand and the insurance company on the other, and undoubtedly in terms of the policy the obligation of the insurance company was in the event specified to pay the sum assured to the persons named in the policy, namely, "the heirs, executors, administrators, or assigns" of Robert Hadden. Accordingly, in the first instance the heirs, executors, administrators, or assigns of Robert Hadden are the persons entitled to payment, and the necessary recipients of the money. It is, however, open to be established as matter of fact in the case of such a policy that it is truly the property of others than the person named in it, and the money will have to be paid over by the primary recipients to those others, if they, and not Robert Hadden's executors, are shown to be the true owners of the policy.

In the present case the competition is between the representatives of Robert Hadden and the representatives of James Hadden, his father, and the point is taken by the former at the outset that James Hadden having had no insurable interest in the life of his son could not effect an insurance on his life which would not be void under the Act of 14 Geo. III. The answer is, that it has been decided on grounds which are clearly valid that the statute merely furnishes a defence to the insuring company against a claim on the policy, but that if the company waive the defence, the question who is entitled to the proceeds of the policy falls to be determined as if the statute did not exist. Accordingly, as the insurance company have paid the money, the plea disappears.

I proceed to consider the question whether at the time the policy was taken out, and from that date down to the death of James Hadden, the father, the policy was his property or the property of his son, and as has already been said, that is a question of fact. The testimony is not very copious, but the leading facts are beyond dispute. When the policy was effected Robert Hadden was a lad of eighteen, and had no money so far as appears. His father was all along in possession of the policy, and paid every premium. When he died the policy was in his repositories. These are very cogent facts, and I dwell particularly on the fact of possession, because the evidence leads to this, that while the policy necessarily took the shape of a transaction between the son and the insurance company, and would naturally be handed to him by the company in the first instance, it appears forthwith to have been given to the person who had bought it, the consideration being the premium he had paid. Now, I find the fact of possession to be of crucial importance, and the question is really the same as arises in the converse case, where the question is whether the property has been passed by delivery. If, then, it were the fact that the father had provided for the taking out of the policy, and had got delivery of it in 1865, and that he had paid the premiums necessary to keep it up from that date down to his death in 1890, these would be very strong facts, according to the decided cases, for holding that the policy was the property of the father.

But when we look at more general considerations the matter becomes more clear. I am willing to concede to the claimants, the son's representatives, that it is eminently probable that the father contemplated the policy ultimately as a provision for the family of the son, but when the policy was taken out the son was 18 years old, and it is eminently improbable that the father intended to place, or did place, the fund at the absolute disposal of the son, which is the contention of the son's representatives. The question is whether from the initiation of the policy in 1865 down to 1890, the son, or the son's assignees, would have been entitled to demand delivery of the policy, or whether the father could have refused to give it up. I say that every probability points to the father having intended to keep as his own what he kept in possession, namely, the policy. If the son could have demanded delivery of the policy, he could have deposited it for security, or have made any other use of it he pleased. It seems more probable, looking to the evidence, that the father intended to hold in his own hands the determination of the question whether the son should get the command of the policy for the benefit of his representatives or not. The course taken conduces to this result, because if the policy was truly the father's property, it required an act of donation on the part of the father expressed by an act of delivery to deprive him of his right to do with the policy what he pleased.

On these grounds, therefore, I think that the policy was the property of the father at his death

Therefore up to this point I am in favour of affirming the Lord Ordinary's interlocutor, but then a question arises which places an entirely different aspect on the decision of the case. I see from the father's settlement that he treats the policy as part of his estate. What did his trustees do on accepting office? The writ was in their hands, but on its face it purported to

make the insurance company the debtors of Robert Hadden on his death. The trustees desired to have the title in themselves, and they made a proposal to Robert Hadden. Now, the proposal made by the trustees, and the transaction which followed upon it, are set out in the assignation. I first notice that the assignation says that the policy belonged to the father, and that Robert Hadden had been requested to assign his right and interest in it to the trustees "upon the conditions hereinafter written, and that it is just and reasonable that I should do so,"—that is to say, the assignation was made on conditions. Now, these conditions were that on Robert Hadden's death the trustees should make payment of the proceeds of the policy after deducting the amount of the premiums paid since 1865, and certain other items, to Margaret Stevenson Hadden, whom failing to Robert's nearest heirs whomsoever. Your Lordships will observe that the trustees expressly bound themselves in their quality of trustees to pay the balance of the proceeds of the policy to the lady named. The representatives of Robert Hadden found upon this obligation, which is expressed in a probative deed, and say, "Assuming the policy to have been the property of the deceased James Hadden, we claim the proceeds under your obligation." What answer do the trustees make? I do not leave out of veiw that the question arises in a multiplepoinding, and that an action for reduction of the deed is not necessary in a process of that kind. At the same time it is quite clear that a probative deed must have full effect in a multiplepoinding until valid grounds are established for treating it as null. In the present case the trustees are left in a singularly unprotected position, for the deed being tabled and pleaded on, they say on record nothing against its having effect according to its terms in the way of explaining it away. In these circumstances it will not do merely to indulge in conjecture as to there having been an absence of consideration for the obligation undertaken by the trustees, and so long as the deed is not adequately explained away it must have effect. I allow that if it appeared on the face of the deed that it was an illegal transaction, the Court would disregard it, but when we look at it there is no reason for regarding it as *ultra vires* of the trustees or invalid. It seems to me to present a fair solution of what was a sufficiently difficult question to determine. I have come to the conclusion that the policy was the property of the father, but I have done so on an examination of a set of facts, of which each required proper weight to be assigned to it, and that being the condition of the argument, it presented the possibility of difference of opinion and dispute between the parties interested. Now, the deed does not give entire and consistent effect to one view, but provides that the balance only of the proceeds of the policy after payment of the byegone premiums shall go to the prescribed recipient. Although it is not on its face a compromise, and although there is no detailed account of the dispute making a compromise appropriate, I think it is in fact a compromise, because it does not give full effect to the view of either party. So if it be conceded that it is for the Court to examine the deed and inquire what were its moving causes, I think that from the point of view of the powers of the trustees, it will hold its own very well, and especially where no one on record challenges its validity.

On these grounds I hold that while the policy was the property of the father, effect must be given to the terms of the assignation, and that Robert's executrix is entitled to be ranked in terms of the second head of her claim.

LORD ADAM—I think it is extremely probable that the policy was taken out at the instance of the father for the benefit of his son Robert, but in the sense that the father meant to keep control of it during his life as his own property, and intended if his son Robert turned out well to make it over for the benefit of his representatives. It is pretty clear to my mind that it was the intention of the father to keep the control and property in the policy in his own hands. He had the custody of it till his death, he paid all the premiums, and in his settlement he describes it as "belonging to me." These facts satisfy me that the policy belonged to the father and not to the son.

But while that is so the trustees of the father, on his death, although in possession of the policy, had no title to demand payment, and were under obligation to keep it up by paying the premiums during Robert's lifetime. They must also have found that it was questionable who would ultimately be entitled to the proceeds. We hold that the policy was the property of the father, but till the decision of the Court that was a doubtful question, and whether or not the policy belonged to the father, the question remained, whether under the special destination in the policy it would not go to the heirs, executors, or assigns of the son. If that were so the trustees were under obligation to keep it up for their benefit, and it was questionable whether they would be entitled to recover the amount of the premiums. Now, all these questions being open at the death of James Hadden, there was nothing, I think, more reasonable than that his trustees should make some arrangement as to the disposal of the policy and the payment of the premiums. Trustees are empowered by statute to settle such cases, and I think that these trustees settled this case, and that the result is to be found in the assignation. I fail to see why it should not receive effect. It is said that this is not a question with the trustees but with the beneficiaries, but if the transaction was within the power of the trustees it binds the beneficiaries just as if they had been parties to it. It is said also that there was no transaction at all because Robert got everything he could have got, and the trustees got nothing. I do not agree at

all, and have already indicated the advantages which the trustees got. I agree with your Lordship that the assignation must receive effect according to its terms.

LORD M'LAREN and LORD KINNEAR concurred.

The Court recalled the interlocutor of the Lord Ordinary, and found that in virtue of the assignation to the trustees of the said James Hadden the claimant Mrs Bryden was entitled to be ranked and preferred in terms of the second head of her claim.

Counsel for Claimant Mrs Bryden—Ure, Q.C.—Aitken. Agents—J. & J. Milligan, W.S.

Counsel for Claimant Mrs Hadden—Campbell, Q.C.—Cook. Agents—Wallace & Pennell, W.S.

Thursday, March 9.

SECOND DIVISION.

[Sheriff of Chancery.

JOHNSTON, PETITIONER.

Succession—Destination—Accretion.

The purchaser of certain heritable subjects took the destination thereto in favour of herself in liferent, and after her death to her daughters A, B, and C, *nominatim*, "in conjunct fee and liferent, and to the heirs of their bodies, and to their assignees whomsover," . . . whom failing to her sons D and E, *nominatim*, "jointly, and their heirs whomsoever," but reserving power to herself at any time of her life, without consent of A, B, C, D, and E, "or any of them or their foresaids, to sell, burden, wadset, or affect with debt, or even gratuitously dispone the subjects, and generally to do every other thing thereanent as if she were absolute fiar." The purchaser died survived by her daughters A and B, and predeceased by her daughter C, who died unmarried. *Held* that under the destination A and B took each a third share in the subjects, but had no right by accretion to the third share, which would have been taken by C if she had survived, and that this share, in terms of the destination, passed to D and E as conditional institutes.

In 1824 Mrs Clara Elizabeth Dickson or Sibbald, widow of William Sibbald, merchant in Leith, purchased a flat in Royal Circus, Edinburgh, from John Paton, builder in Edinburgh. The destination in the disposition of these subjects was taken in the following terms:—"To and in favour of the said Mrs Clara Elizabeth Dickson or Sibbald in liferent during all the days of her life, and after her death to Clara Elizabeth Sibbald, Jane Sibbald, and Mary Frances Sibbald, daughters procreated of the marriage between the said Mrs Clara Elizabeth Dickson or Sibbald and the said deceased William Sibbald, in conjunct fee and liferent, and to the heirs of their bodies, and to their assignees whomsoever, heritably and irredeemably, excluding the *jus mariti* of any husband whom they may hereafter marry: Declaring that in the event of the marriage of any of the said Clara Elizabeth Sibbald, Jane Sibbald, and Mary Frances Sibbald, the liferent right and interest in the said subjects belonging to such of them as may be married shall cease and determine, and shall accresce and belong to such of them as remain unmarried; and in the event of the whole of them being married, then and in that case their respective liferent interests shall revive and revert and belong to all of them in terms of the above destination; whom failing to and in favour of Alexander Sibbald and Charles Robert Sibbald, sons procreated of the marriage between the said Mrs Clara Elizabeth Dickson or Sibbald and the said deceased William Sibbald, jointly, and their heirs and assignees whomsoever; but with and under the reservation and power after written in favour of the said Mrs Clara Elizabeth Dickson or Sibbald, All and whole . . . But reserving always full power, faculty, and liberty to the said Mrs Clara Elizabeth Dickson or Sibbald at any time of her life, and without consent of the said Clara Elizabeth Sibbald, Jane Sibbald, Mary Frances Sibbald, Alexander Sibbald, and Charles Robert Sibbald, or any of them or their foresaids, to sell, burden, wadset, or affect with debt, or even gratuitously dispone, the subjects above disponed, and generally to do every other thing thereanent as if she were absolute fiar of the same."

Sasine was taken upon the precept of sasine contained in this disposition conform to instrument of sasine dated 25th and recorded 30th November 1824.

Mrs Clara Elizabeth Dickson or Sibbald died on 24th February 1865, survived by two of her daughters, viz., Mrs Jane Sibbald or Johnston and Mary Frances Sibbald, and predeceased by her daughter Clara Elizabeth Sibbald, who died unmarried in the year 1835. Mrs Jane Sibbald or Johnston died on 15th April 1888.

In September 1898 David Henry Johnston, Mehama, Marion County, Oregon, United States of America, presented a petition to the Sheriff of Chancery, in which he set forth that the late Jane Sibbald or Johnston died last vest and seised in All and whole the one *pro indiviso* half of all and whole the subjects above mentioned, and that the petitioner was her eldest son and nearest lawful heir of provision in special in these subjects under and by virtue of the disposition before mentioned, and craved the Sheriff of Chancery to serve him as such heir of provision in special.

Proof having been led to establish the facts narrated *supra*, the Sheriff of Chancery (CHISHOLM) on 1st November 1898 issued the following interlocutor:—"The Sheriff having considered the petition, proof, and productions, and heard counsel on behalf of the petitioner, Finds it proved that the late Jane Sibbald or Johnston