value of the annuity, and no terminus from which the times for payment of the instalments are to be calculated. It is not, in my opinion, intended that a devolution by law of a beneficial interest in expectancy, where the expectancy is never realised, and where possession or beneficial enjoyment is never attained, should be considered a succession within the meaning of the Act. I cannot say that I think the present case correctly answers the description of a beneficial interest accruing either in possession or in expectancy. On the contrary, it appears to me that if we are to construe the Act strictly, this is *casus improvisus*, which in a taxing Act would be sufficient for a judgment of absolvitor. But I am rather disposed to construe the Act according to its fair meaning and intention, comparing and combining the language and form of expression throughout the various sections. The Act is framed on the principle of using popular and not technical language, selecting with great discrimination and care words and phrases of comprehensive meaning equally applicable to the several parts of the United Kingdom. It is probably inevitable that such a statute should give rise to difficult questions of construction. But in the present case I am able to reconcile the language with what I conceive to be the principle and general scope of the statute. I do not think that any interest was intended to be taxed as a succession which never came into the actual beneficial possession of the successor; and such was certainly the case with Williamina Finlay, so-called successor to her sister. It was utterly barren, not because the property itself was unfruitful, but because she did not survive long enough to have a legal title to its fruits, or to the smallest part of them. On these grounds I answer the first question stated as arising on the special case in the negative. This also leads me to answer the second question in the negative, and the first alternative or counter-question in the affirmative. The defender Stevenson, is at common law, by virtue of his service and infeftment, the successor of Janet Finlay, Williamina having been heir-apparent only, without possession, for about three months; and this state of the title at common law is conformable to my construction of the Succession Duty Act 1854; because there is no beneficial interest vested in Williamina as a successor interposed between Janet and the defender. I am on these grounds prepared to pronounce judgment of absolvitor in so far as regards the first count of the information, and do not find it necessary to answer the second alternative or counter-question.

Wednesday, Jan. 24.

FIRST DIVISION.

KERR *v.* JAMES AND OTHERS.

Competent and Omitted. Suspension of a final decree *in foro*, on grounds which might have been urged before the decree was pronounced (aff. Lord Mure), *refused.*

Counsel for Suspender—Mr Gordon and Mr Webster. Agents—Messrs Maclachlan, Ivory, & Rodger, W.S.

Counsel for Chargers—The Lord Advocate and Mr Balfour. Agents—Messrs Gibson-Craig, Dalziel, & Brodies, W.S.

This was a suspension of a charge upon a decree *in foro* pronounced by Lord Barcaple in favour of the respondents for payment of a sum of £6000 out of a fund *in medio* in a process of multiplepoinding. The grounds of suspension were—(1), that the decree was pronounced in favour of, and the charge was given by, parties resident in England without a mandatory having been sisted; (2), that the respondents had no sufficient title to grant a discharge to the complainer; (3), that the decree was disconform to, and went beyond the terms of, the judgment which it was intended to carry out; and (4) that the money being in bank, the complainer was not in safety, and had not the power to make the payment without a special warrant to uplift, which the chargers had failed to obtain.

The Lord Ordinary (Mure) refused the suspension, holding that the objections stated were competent but omitted before the Lord Ordinary when he heard parties on the motion for interim payment; and further, that they could not be pleaded by way of suspension to a charge upon a final decree *in foro*, which the complainer should have reclaimed against (Lumsdaine *v.* Australian Company, 18th December 1834, 13 S. 215). His Lordship also thought that the objections were ill founded on the merits.

The Court to-day, after hearing Mr Webster for the suspender, adhered.

Thursday, Jan. 25.

FIRST DIVISION.

LAING *v.* NIXON.

Proof—Examination of Aged Witness—A. S. July 11, 1828, *sect.* 117. Petition by a pursuer for the examination of the defender as an aged witness allowed after the record was closed, on the pursuer waiving his right of reference to oath.

Reference to Oath. Is it competent to refer to a defender's oath when his examination as a witness has been taken on commission to lie *in retentis*, but is not afterwards used as evidence?

Practice. Observation (per Lord Deas) as to proof taken to lie *in retentis.*

Counsel for Petitioner—The Solicitor-General, Mr Gordon, and Mr M'Kie. Agents—Messrs Webster & Sprott, S.S.C.

Counsel for Defender—The Lord Advocate, Mr Clark, and Mr Watson. Agents—Messrs Paterson & Romanes, W.S.

The petitioner, who is a manufacturer in Hawick, raised an action of damages on 20th December 1865 against the defender, also a manufacturer there. Before the time had arrived for lodging defences, the petitioner presented an application to the Court for a commission to take Mr Nixon's deposition as a witness on commission to lie *in retentis* in regard to the matters set forth in the condescendence. The application was founded upon section 117 of the Act of Sederunt of 11th July 1828, which makes it competent for the Court to grant commission for the examination of witnesses whose evidence, owing to great age (not under seventy years), is in danger of being lost.

The petition was opposed by the defender, on the ground that the action was founded on allegations that he had been guilty of a series of frauds upon the petitioner extending over a period of fourteen years, and that the summons contained no specification of the time or place when the alleged acts of fraud were committed, but merely set forth that the pursuer had suffered damages to the extent of the random sum of £10,000. He also objected that the present application was a mere pretext for obtaining a precognition from him for the petitioner's guidance in the future conduct of the case against him.

The matter was discussed some days ago, when the Court could not see their way to granting the prayer of the petition [in the present state of the record, defences not being yet due. It came up again to-day, the record having been since closed.

An objection was suggested by Lord DEAS, founded on the right of the pursuer to refer his case to the defender's oath, his Lordship observing that if the evidence taken suited his purpose, he might at once refer to the defender's oath. This objection was obviated by the pursuer agreeing to put in a minute waiving his right to refer to oath, but doubts were