To my mind this indicates that the survivorship meant is that of the mother, and if so there is no difficulty, because we have the three *nominatim* legatees surviving their mother, and in my view the vested right of these legatees is not affected by the annuitant being also alive. She is willing to take her annuity if properly secured. I am for answering the question in the affirmative.

LORD GIFFORD—This question has two branches, whether the residue has now vested and is now divisible. Both should be answered in the affirmative. I think on a sound construction of this trust settlement that the residue has vested in the three *nominatim* residuary legatees. The only difficulty is the use of the word survivor in connection with the gift, for if it referred to the period of division it would stop vesting, according to the case of *Young*. But I think the testator himself has interpreted his own meaning to be that it referred to the mother, so that there is really no contingency to stop vesting. The testator does not direct the trustees to divide until the death of the annuitant. The question is, does he intend to suspend vesting thereby. I cannot read the clause so. His intention was to secure the interests of the liferentrix and annuitant.

LORD NEAVES concurred.

Counsel for First Party—G. Smith and Balfour, Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Second and Third Parties—Solicitor-General (Watson) and Mackintosh. Agents—Mitchell & Baxter, W.S.

Thursday, November 5.

SECOND DIVISION.

[Sheriff of Fife.

M'DONALD *v.* GILRUTH.

Filiation—Physical Incapacity—Medical Evidence.

In an action for filiation and aliment of an illegitimate child, the defence was a general denial of the pursuer's statements, and an allegation of physical incapacity. The fact of connection was proved, but the defender maintained that he was incapable of having fruitful connection. The Sheriff-Substitute allowed a proof, and on the report of three medical men assoilzied the defender. The Sheriff reversed, on the ground that the defender had not proved it was impossible he could have been the father of the child.

The Court adhered, and were unanimously of opinion that the medical evidence admitted was insufficient to verify the defence,—LORD NEAVES holding that the admission of medical evidence where the defence did not amount to total incapacity was unprecedented and inexpedient.

Counsel for Appellant — Rhind. Agent—Wm. Officer, S.S.C.

Tuesday, November 10.

SECOND DIVISION.

[Lord Gifford, Ordinary.

BUCHANAN *v.* STEWART.

Recompense—Amelioration.

Where a trustee on a sequestrated estate completed certain buildings to which the bankrupt had no title but merely a personal claim against an investment company, who had made advances to the bankrupt, *Held* that the trustee was not entitled to recompense from the investment company for the money beneficially expended on the subjects.

The summons in this suit, at the instance of James Buchanan, Alexander Forbes, and William Leckie, trustees of the Fourth Provident Property Investment Company, enrolled under 6 and 7 Will. IV., c. 32, against James Wilkie and William Stewart, trustees on the sequestrated estate of the said James Wilkie, concluded that it should be found and declared that the Fourth Provident Investment Company and the pursuers, as trustees, were creditors of James Wilkie at the date of his sequestration on 18th December 1868, and still are such creditors, in respect of advances on loan made by the said Company to James Wilkie as a member or shareholder of said company, and in respect of interest and penalties, and that the said company, and the pursuers, as creditors of James Wilkie, and feudally vested in certain subjects (specified), were and are entitled to sell said subjects, and out of the price to repay the amount of said advances, amounting to £685, 11s. 9d., as at 18th December 1868, with interest, fines, and penalties according to the rules of the company and that William Stewart, trustee foresaid, should be decerned and ordained to remove from said subjects, and as trustee and individually should be ordained to hold just count and reckoning with the pursuers with respect to the rents and profits of said subjects since the date of his appointment, and to make payment of the sum of £500, or such other sum as shall be ascertained to be the amount of said rents and profits, with interest.

The pleas in law for the pursuers were—"(1) The pursuers being creditors of the said James Wilkie, as above mentioned, and holding *ex facie* an absolute conveyance to the property in question, are entitled, in respect of the rules of the company, and *separatim* of their common-law rights, to remove the defender therefrom, to draw the rents thereof, and to sell the subjects for payment of their debt. (2) The defender having failed to pay the pursuers either the principal or interest, and having disputed their claims to the rents, the present action is necessary, and the pursuers are entitled to retain the expenses out of the prices of the property. (3) The defender having collected the rents of the property, he is liable to account therefor to the pursuers, and he is personally liable in the rents received by him, and he is liable in expenses to the pursuers. (4) In respect of the stipulations of the bond condescended on, the balance or charge against the said James Wilkie is conclusively ascertained by the stated account made out from the books of the company, and signed as aforesaid, and the defender is barred from disputing or quarrelling the said balance. (5) The defender's statements are not relevant,