under the Titles to Lands Acts of 1858 and 1868, which the petitioner desires to remove by proceeding under the Act of 1874. Whether it has been effectually obviated we cannot determine in this process.

The LORD PRESIDENT concurred.

The Court pronounced the following interlocutor:—

"Having resumed consideration of the petition, together with the report by Professor Moir, . . . Find and declare that the said will and codicil . . . of Miss Agnes Nisbet were subscribed by her as maker or granter thereof, and by William Barton and Dorothea Stewart or Kerr, the witnesses by whom the said will and codicil bear to be attested, and decern; and find the petitioner entitled to the expenses of the present proceedings out of the funds of the trust-estate of the said Agnes Nisbet."

Counsel for the Petitioner — Aitken. Agents—Bell & Bannerman, W.S.

Wednesday, January 27.

SECOND DIVISION.

[Sheriff-Substitute at Glasgow.

STEWART, BROWN, & COMPANY *v.* GRIME.

Contract—Construction—Scope of Clause of Reference — Incorporation of Rules of Association in Contract between Member and Non-Member.

By contract of sale dated 29th May 1895 entered into between A, a member of the Beetroot Sugar Association, and B, a non-member, A, subject always to the rules, regulations, and bye-laws of the association, sold to B a quantity of beetroot sugar at a fixed price, the sugar to be delivered in October to December 1895 in equal quantities per month. It was provided that the rules, regulations, and bye-laws of the association were incorporated in the contract as fully as if the same had been expressly inserted therein, and further that the council of the association was the referee of all disputes.

Rule 32 provided that "if any member liable on the face of unmatured contracts shall suspend payment or be declared a defaulter, . . . the Council of the United Kingdom Association to which he belongs shall, as soon as possible, after the suspension or default, . . . meet, fix, and publish official quotations and due dates for all periods of delivery that may be in question, the prices to be according to the average buying and selling market value of the day on which the member defaulted or suspended payment. The contracts in question shall then be closed upon the terms so fixed."

A having suspended payment in June 1895, a dispute arose between him and B as to whether rule 32 applied to the contract. A submitted the matter to the council of the association, who decided that the rule applied. B refused to recognise the award, and A raised an action to enforce it.

Held (1) that the council were the arbiters of the dispute in terms of the contract, and that the award was binding on B; (2) that rule 32 applied to B, just as if he were a member of the association.

By contract of sale dated 29th May 1895, entered into between Stewart, Brown, & Govan, merchants, Glasgow, who were members of the Beetroot Sugar Association, and James Grime, Rosebank, Busby, who was not a member of that association, the former, "subject always to the printed rules, regulations, and bye-laws of the Beetroot Sugar Association," sold to Grime 1500 bags of beetroot sugar of 100 kilos each, the crop of 1895-96 at 10s. 9d. per cwt., free on board at Hamburg, the sugar to be at the shipping port ready for shipment in October-December, in equal quantities per month. By the contract it was provided — "The above-mentioned rules, regulations, and bye-laws are incorporated in this contract as fully as if the same had been expressly inserted therein," and further, "the Council of the Beetroot Sugar Association of London is the referee of all disputes."

Rule No. 32 of the rules relating to contracts of the association provides as follows:—"If any member liable on the face of unmatured contracts shall suspend payment or be declared a defaulter, or when through death his firm ceases to exist, the Council of the United Kingdom Association to which he belongs shall, as soon as possible after the suspension or death has become officially known, or be satisfactorily proved to the council by other members concerned in such contracts, meet, fix, and publish official quotations and due dates for all periods of delivery that may be in question, the prices to be according to the average buying and selling market value of the day on which the member defaulted or suspended payment. The contracts in question shall then be closed upon the terms so fixed. It shall also, on any given day, be in the power of any member, on payment of fees according to rule 45, to call upon the council of his association to fix official prices and to certify thereto. Such certificates may be used for the closing of contracts with non-members who may have suspended payment, or may have been declared defaulters."

Rule No. 35 of these rules provides as follows:—"Any disputes that may arise out of or in relation to any contract shall be referred either to such member of the association at the port of destination, as both parties may agree on, or else to two members thereof, one to be chosen by each party or else to the council."

Rule 41 of these rules provides as follows:—"A registration fee of 10s. shall be paid

upon such application to the secretary for arbitration, and shall follow the fees in the award. New members of the Beetroot Sugar Association, who have entered into contracts with members, may apply to the council for arbitration, paying at the time of application a registration fee of £1, 11s., which will not follow the award."

On 15th June 1895, before the sugar fell to be delivered, Stewart, Brown, & Company suspended payment, and in terms of rule No. 32 the contract of sale fell to be closed according to a price to be fixed by the council of the Beetroot Sugar Association. The price was accordingly fixed at 10s. 3d per cwt., and in applying this price to the contract, there was a balance of £73, 6s. due to Stewart, Brown, & Company by Grime, being the difference between 10s. 9d. per cwt., the price at which the sugar was bought, and 10s. 3d., the price fixed by the association when closing the contract. On application being made to Grime for payment of the balance, he refused to pay, on the ground that rule 32 did not apply to contracts between members of the association and outsiders.

Thereafter Stewart, Brown, & Company submitted the matter to the council of the association for arbitration, due notice being given to Grime. On 16th June 1896 the council issued an award, whereby they decided that the defender should pay Stewart, Brown, & Company £73, 6s., being the difference in price between his contract and that fixed by the council on 15th June 1896.

Grime refused to recognise the award, and Stewart, Brown, & Company thereupon raised an action against him for £73, 6s. with interest, in the Sheriff Court at Glasgow.

On 24th November 1896 the Sheriff-Substitute (STRACHAN) pronounced an interlocutor, in which, after pronouncing findings of the facts above mentioned, he found in law that the award was valid and binding on the defender, and that he was indebted to the pursuers in the sum thereby decided to be paid by him, and therefore decerned against the defender for the sum sued for.

Against this interlocutor the defender reclaimed, and argued—There was no valid reference of the present dispute between the parties to the council of the Beetroot Association. The council were to be arbiters only in reference to disputes arising in regard to contracts falling under the rules, and if he could show that the present contract did not fall under the rules in question, then the clause of reference did not apply to the dispute, and the matter having been referred to the council without his consent, he was not bound by the award—*Howden & Company* v. *Dobie & Company*, March 16, 1882, 9 R. 758. Rule 32 was applicable only to members of the association *inter se*, and therefore could not affect him in any way, he not being a member. The general rules relating to contracts of the association, such as those dealing with quantity, sampling, delivery, and questions of that kind incidental to sale, were imported into the contract, and were binding upon him. But rule 32 was not of that character; it was strictly limited by its terms to members of the association, and could not affect outsiders. It was in the same position as rule 41, in which a distinction was drawn between members and non-members, and under the latter rule non-members could not free themselves from their liability to pay a larger registration fee on applying to the council for arbitration by incorporating the rules in their contracts with members. Rule 32 could only have applied to the defender if he had become insolvent. As it did not apply in his case, and as he had never consented to the arbitration, he could not be held liable for a loss incurred through the fault of the pursuers—*Duncan* v. *Hill*, 1873, L.R., 8 Exch. 242.

Argued for pursuers—Under the contract all disputes were to be referred to the council as arbiter. The question whether rule 32 applied to the contract had been referred to the council, and the question had thus been decided by the tribunal to whom the parties had agreed to refer their disputes. That was sufficient to determine the case. But even apart from that, it was quite plain that rule 32 was binding on the defender, as the whole rules and bye-laws of the association had been incorporated in the contract.

At advising—

LORD JUSTICE-CLERK—The pursuers in this case, who are members of the Beetroot Sugar Association, entered into a contract with the defender, who is not a member of that association. This contract provided that the rules, regulations, and bye-laws of the association should be incorporated in the contract as if the same had been expressly inserted therein, and that the council of the association was to be the referee of all disputes. The defender therefore entered into this contract on the footing that the rules of the association applied to the contract; he accepted the rules as applying to him as if he had been a member of the association. It is quite plain on the face of the rules that they contemplated that persons who were non-members of the association might enter into a contract under which they were to be bound by and have the benefit of the rules.

It is contended that the rules although incorporated in the contract only apply to the defender where there is an express reference to non-members in the rules themselves. I cannot accept that argument. If such a qualification was intended it could easily have been expressed in the contract. But what the contract does is to import the whole rules as binding on both parties.

Besides, it is expressly provided that the council of the association is to be the referee in all disputes. The matter has been considered and decided by them; I see no ground for interfering with their judgment.

LORD YOUNG—I am of the same opinion. The introductory words of the contract

are, "subject always to the printed rules, regulations, and bye-laws" of the association, and the contract ends with a provision that these rules are incorporated into it. There is no dispute as to the identity of these rules or bye-laws. The contract further provides that the council of the association is to be the referee of all disputes. A dispute arose between the parties to the contract as to the effect of this reference to the rules. What was the consequence of that? The dispute was referred to the council as referee. The council decided that the rules applied. I agree that their decision is final. I also agree that the view which the council took is right. The case is as clear as if this was a contract between dealers in stocks made subject to the rules of the Stock Exchange. In such a case the rules of the Stock Exchange would be imported into the contract, and if the contract further provided that all disputes under it were to be referred to A B, it is plain that if any difference arose under the contract, A B would be the proper person to decide it.

On the whole matter I am of opinion that the judgment of the Sheriff is right.

LORD MONCREIFF—I am of the same opinion. It is probably sufficient for the decision of the case that in terms of the contract the council of the association is made the referee of all disputes, and that the council has already decided on the matter under discussion.

On the merits I am of opinion that the decision of the council was sound. I think the defender clearly brought himself under the rules of the Beetroot Association. It is admitted that if the contract had been between members of the association, rule 32 would undoubtedly have applied. It is provided that the rules of the association may be applied to contracts between members and non-members, and this rule having been imported into the contract between the parties, it applies just as if they both had been members of the association.

LORD TRAYNER was absent.

The Court dismissed the appeal and affirmed the interlocutor appealed against.

Counsel for the Pursuers — Ure—Deas. Agents — Morton, Smart, & Macdonald, W.S.

Counsel for the Defender — Dundas—Craigie. Agent—James Russell, S.S.C.

Friday, January 29.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

SCOTT *v.* TAYLOR'S EXECUTORS.

Executor—Powers of Co-Executors—Right of Majority of Executors to Compromise Action.

Where five out of six executors-nominate compromised an action which had been raised by the whole of them in the interests of the executry estate, the sixth refusing to assent to the settlement, but not alleging fraud or unfair conduct on the part of his co-executors—*held* that the sixth executor had no title to proceed with the action.

Judicial Factor—Curator Bonis—Power to Compromise—Essential Error—Reduction.

The right to compromise conflicting claims on behalf of his ward is *intra vires* of a *curator bonis*.

An action of reduction of an agreement setting forth a compromise made by the *curator bonis* of a lunatic ward, which was brought on the ground that the *curator bonis* when he entered into the agreement was under essential error, but in which there was no averment that the other parties to the compromise did anything to induce the error of the *curator bonis*, *held* irrelevant.

Trust—Trustee—Judicial Factor—Trusts (Scotland) Amendment Act 1884 (47 *and* 48 *Vict. c.* 63), *sec.* 3.

The Trusts (Scotland) Amendment Act 1884 provides by section 2 that in the construction of recited Acts—one of them being the Trust Act 1867—"trustee" shall include tutor, curator, and judicial factor, and "judicial factor" shall mean *curator bonis*.

Opinion (by Lord Kincairney) that this provision was retrospective.

In January 1894 James Edward Scott and his five brothers and sisters, the executors-nominate of Alexander Taylor, conform to his last will and testament dated 15th November 1866, and relative codicil dated 17th November 1880, "as said executors and also as individuals," raised an action against Mrs Mary Taylor or Craig and others, the executors appointed by the trust-disposition and settlement of Mrs Janet Fraser or Taylor, mother of the said Alexander Taylor, dated 2nd June 1870, and against James Wink, sometime accountant in Glasgow. The action concluded for reduction of an agreement dated 25th September and 4th October 1873, between the defender Wink, as *curator bonis* of Alexander Taylor, and the representatives of Mrs Taylor then deceased, for an account of Mrs Taylor's intromissions with her son's property, and for decree for £14,000 failing accounting.

The pursuers pleaded, *inter alia*—"(1) The said agreement falls to be reduced in respect (1st) that it was granted under mutual