The Lords sustained the appeal, recalled the interlocutor of 3d March 1882, and subsequent interlocutors appealed against, and before further answer allowed the defender a proof of his allegations, and the pursuer a conjunct probation.

Counsel for Appellant—R. V. Campbell. Agent—D. Lister Shand, W.S.
Counsel for Respondent—Dickson. Agent—Thomas Carmichael, S.S.C.

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*Saturday, June 24.*

## FIRST DIVISION.

THOMSON AND OTHERS, PETITIONERS.

*Process—Presumption of Life Act* 1881 (44 *and* 45 *Vict. c.* 47)—*Competency.*

In a petition under the Presumption of Life Limitation (Scotland) Act of 1881, presented by a brother of the absentee, praying for authority to make up a title to his share of the absentee's interest in their father's estate, after the proof had been led certain other members of the family compeared by minute at the diet appointed for hearing the petitioner upon the evidence, and craved the Court to sist them as parties to the petition, and to conjoin them as petitioners therein for their interest in the succession of the absentee. The Court sisted the minuters, and on hearing counsel *granted* authority to the whole parties, both petitioners and minuters, to make up titles to their respective proportions of the share of the absentee in the same manner as if he had been dead.

Counsel for Petitioners — Ure. Agent — R. Ainslie Brown, S.S.C.
Counsel for Minuters—Jameson. Agent—F. J. Martin, W.S.

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*Tuesday, June 27.*

## OUTER HOUSE.

[Lord Kinnear, Junior Lord Ordinary.

SPROT, PETITIONER.

*Entail — Expectancy — Nearest Heirs — Entail Amendment Act* 1875 (38 *and* 39 *Vict. cap.* 61), *sec.* 5.

In an application for authority to disentail, *held* that the value of expectancy of one of the nearest heirs who was in pupillarity was to be ascertained as at the date of the instrument of disentail.

This was a petition for authority to record an instrument of disentail presented by James Sprot, Esq., heir of entail in possession of the entailed estate of Spott, in the county of Haddington. The petitioner was of full age, and the consent of the two next heirs had been obtained, but the third was in pupillarity, having been born on 12th November 1881, and unable to grant his consent; during the progress of the petition a *curator ad litem* was appointed to the said pupil. The petition was presented under the Entail Statutes and relative Acts of Sederunt. The petition was remitted to a man of business to value the estate, and also to Mr Sprague, C.A., to calculate the values in money of the several interests of the succeeding heirs of entail.

Some delay took place while the estate was being valued, &c., but on 12th June 1882 Mr Sprague wrote the following letter to the agents of the petitioner:—"Dear Sirs,—In consequence of the delay which has taken place in this matter, I shall be glad to receive instructions as to the date at which the values of the several interests are to be calculated—whether (1) as at the date of presenting the petition, which I believe was the 13th January, or (2) as at the date of the remit, 7th February, or (3) at the present time. In general, the delay of about four or five months would not have made any material difference in the value; but in the present case, where the value has to be determined of the interest of an infant born on the 12th November last, who would therefore be only two months old at the first of the above-mentioned dates, but is now seven months old, the difference in the value, according as the one or the other date is taken, will be considerable,—Yours faithfully,

"T. B. Sprague."

Upon a motion on a minute to obtain a direction from the Court as to the matters contained in the said letter—

Argued for petitioner—This case is practically decided by the case of *M'Donald* v. *M'Donalds*, in which it was held that the expectancy or interest of the next heirs of entail was to be valued as at the date of the instrument of disentail, and that is the proper date to be taken here in place of any of the dates suggested by Mr Sprague.

Argued for respondent (the *curator ad litem*)—In regard to that case no general rule was laid down, and injustice might easily be done by an heir of entail in possession to any infant child, who might be one of the nearest heirs to an entailed estate, as the time when the deed of disentail must be executed was not fixed.

After consideration Lord Kinnear delivered the following interlocutor and note:—"The Lord Ordinary having considered the petition with the minute, and the letter from Mr Sprague, the actuary therein referred to, and heard counsel, Finds that the value in money of the expectancy or interest in the estate of Spott falls to be ascertained as at the date of the instrument of disentail."

"*Note.*—The question as to the date at which the interests of heirs should be valued appears to me to be settled by the judgment of the House of Lords in *M'Donald* v. *M'Donald*, March 12, 1880, 7 R. (H.L.) 41."

Counsel for Petitioner—Blair. Agents—Hunter, Blair, & Cowan, W.S.

Counsel for Respondent — Low. Agents—Macandrew, Wright, Ellis, & Blyth, W.S.

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*Wednesday, June 28.*

## FIRST DIVISION.

[Lord M'Laren, Ordinary.

## THOMSON *v.* MUNRO, *et e contra.*

*Arbiter* — Fines Compromissi — *Corruption* — *Reduction.*

It is competent in an action for implement of arbiters' award to inquire whether their actings have been *ultra fines compromissi*, but averments of corruption cannot be made except by a process in reduction.

In June 1879 Daniel Munro, joiner in Greenock, contracted with William Wilson Thomson, builder, Greenock, for the joiner work of three tenements of houses in Brisbane Street there. During the progress of the work numerous disputes arose between the parties regarding it, and they, by minute dated 9th March 1880, agreed to refer all such matters as had arisen or might arise between them to two skilled joiners, Gilbert Anderson Ramsay and Allan Bertram Smith, whose decision should be binding on both. On the 18th of June 1881 the referees by a final award found that the amount due to Munro by Thomson was £3044, 18s. 3d. under deduction of £2500 paid to account. Thomson refused to admit liability for the balance of £544, 18s. 3d. found due by him, and Munro brought an action against him for the amount in the Sheriff Court of Renfrew and Bute at Greenock. The grounds of defence were that the award was invalid, as dealing with extra work, which was alleged to be *ultra fines compromissi*, and that the partiality with which the arbiters had dealt with the questions and examined the parties amounted in law to corruption. Meantime Thomson raised an action against Munro in the Court of Session, and the Lord Ordinary having heard that there was contingency between the two actions, conjoined the Sheriff Court action with that depending in the Court of Session. The pursuer now demanded from the defender repayment of certain sums, alleging that the sum of £2500 already paid to him under the contract was above the value of the work done, and re-stating the assertions which formed his grounds of defence to the Sheriff Court action. The defender pleaded that the present action was excluded by the minute of March 9, 1880, and by the arbiters' award, and that the pursuer having consented to and acquiesced in the determination by the arbiters on the whole claims, could not now dispute their award. The two actions thus raised were really the same question—What was the amount payable by Thomson to Munro? and, according to the contentions of the parties, whether that exceeded or fell short of the sum of £2500 already paid to account?

The Lord Ordinary on the 18th of March found it "not proved that the arbiters exceeded their powers under the minute of submission, and *quoad ultra*, that the objections stated to their conduct and proceedings in the submission cannot be pleaded in defence to the action of implement, the award being *ex facie* regular or not challenged by reduction." His Lordship's opinion states that the first of these findings was based "on the ground that the reference of all matters in dispute that had arisen or might arise in relation to a contract for a lump sum, necessarily embraces what does or does not fall within the offer for a lump sum, and because the parties themselves and the referees are agreed that these and no others were the questions in dispute." And "on the second branch of the case, irregularity in the mode of conducting the reference, it must be borne in mind that under the Act of Regulations the only grounds on which the conduct of arbiters can be impeached are corruption, bribery, or falsehood. The word corruption has received a certain extension of meaning in the decisions of the Court so as to include all conduct that if unexplained might be regarded as corrupt, in the sense of indicating a bias in favour of one of the parties, such as refusing to take the proof of one of the parties, having heard the other. Nothing of this kind has been established in the present case. But I am further of opinion that until the decree has been reduced it must be treated as an operative decree, and that it is not within my competency in this action to reduce it, or to refuse effect to it on the ground of corruption."

Decree was accordingly given in the action at the instance of Munro, and he was assoilzied in the action at the instance of Thomson.

The pursuer reclaimed, and shortly afterwards raised an action of reduction of the award, in which defences had not been lodged when the reclaiming-note from the Lord Ordinary's judgment came before the First Division.

It was argued for pursuer—The action of the arbiter is *ultra fines compromissi*, but if it is not, then in their acting they have misconducted themselves, and therefore their award is not binding.

Authorities—*A* v. *B*, January 7, 1617, M. 662; *Birrell* v. *Dundee Jail Commissioners*, 21 D. 640; *Calder* v. *Mackay*, 22 D. 741; *Blaikie* v. *Aberdeen Co.*, 15 D. (H. of L. cases) 20; *Tough* v. *Dumbarton Water-Works Commissioners*, 11 Macph. 236; *Cameron* v. *Menzies*, 6 Macph. 279; *Millar* v. *Millar*, 17 D. 689; *Sharpe* v. *Bickerdyke*, 3 D. 102; *Alexander* v. *Bridge of Allan Water Co.*, 7 Macph. 492; Bell on Arbitration, 145, 154. As to the question whether reduction of the award was necessary or not—*Murray* v. *Mure*, 6 Macph. 145; 40 and 41 Vict. c. 50, sec. 11.

The respondent argued—There was no *prima facie* appearance of unfairness in the award. Arbiters were not bound to give details of their findings.

Authorities—*Johnston* v. *Cheape*, 5 D. 247; *M'Callum* v. *Robertson*, 2 W. & S. 344; *North British Railway* v. *Barr*, 18 D. 102; *Kirkwood* v. *Morrison*, 5 R. 79; Bell on Arbitration, 142, 175, 164, 39.

At advising—

LORD PRESIDENT—The interlocutor of the Lord Ordinary disposes of the two grounds on which Thomson resists the claim of Munro for a decree in terms of the award, by finding it not proved that the arbiters exceeded their powers, and that the objections to their conduct and proceedings are no defence to the action of implement. I agree with the Lord Ordinary in both of these findings, for it seems clear to me from the evidence that they are well founded. In the submission the parties "mutually agree to refer all matters in dispute that have arisen or may arise in reference to contract of joiner and car-