volved—and therefore the case fell under the general rule, and not under the exception, and the reference being to arbiters unnamed it was bad—*Tancred, Arrol, & Company* v. *The Steel Company of Scotland*, March 7, 1890, 17 R. (H. of L.) 31.

At advising—

LORD PRESIDENT—In this case the holder of a fire policy has raised the present action against the insurance company to recover the loss occasioned by a fire which occurred upon his premises in February 1891. The defence to the claim is that it is excluded by the terms of the clause of reference in the policy.

The Lord Ordinary has repelled that plea and has sent the case to trial. In so doing his Lordship has proceeded upon the general rule of the law of Scotland that an agreement to refer future disputes to unnamed arbiters is ineffectual.

While this, no doubt, is the general rule, there is the exception to it referred to in that part of his note, in which, quoting from Bell on Arbitration, he observes that "there is an exception to the rule when the agreement to refer" does not contemplate the decision "of proper disputes between the parties, but the adjustment of some condition or the liquidation of some obligation contained in the contract of which the agreement to submit forms a part." Now, this rule and the exception to it are fixed by a series of decisions, and they are exemplified in the recent decision of *Tancred, Arrol, & Company* in the House of Lords.

The only question, therefore, which we have to determine is, whether the present case falls within the rule or within the exception, and that of course depends upon the terms of the claim of arbitration—[*His Lordship here read the clause above quoted*]. The case provided for is, "When a difference arises between the company and the insured as to the amount payable in respect of any alleged loss or damage by fire." Now, what does a claim of this kind comprehend? Is it a mere assessment of damages—that is to say, a mere valuation of the loss sustained—or is it an assessment in the wider sense of the word, namely, a determination as to what articles the claim is applicable. Questions may arise as to whether articles alleged to be destroyed fall within the scope of the arbitration clause; or as to whether articles alleged to be destroyed were actually in the premises at the time; or as to the value of articles burnt which could only be got at by an expert, or by some one who knew their intrinsic value.

It appears to me, therefore, that this clause of reference is of the wider kind. If the value of the articles lost was disputed, then I think that the language of this clause would admit inquiry, not only as to whether the articles in dispute were or were not in the building at the time of the fire, but also as to whether they fell under the clause of insurance.

I therefore agree with the Lord Ordinary in holding that this clause of reference falls under the general rule which I have stated, and not under the exception.

LORD ADAM concurred.

LORD M'LAREN—I have already expressed my opinion on clauses of this kind in the joint opinion of Lord Rutherfurd Clark and myself in the Second Division case of *Ramsay* v. *Strain*, 11 R. 527, and I have nothing further to add.

LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuer — Salvesen. Agent—T. M'Naught, S.S.C.

Counsel for the Defenders — M'Clure. Agents—T. & R. B. Ranken, W.S.

Saturday, July 18.

FIRST DIVISION.

WHYTE AND OTHERS, PETITIONERS.

Trust—Removal of Trustee—Failure to Carry Out Directions of Trust-Deed—Petition at the Instance of All the Beneficiaries.

Where a sole trustee had wilfully failed to carry out the directions of the trust-deed, a petition for his removal at the instance of all the parties beneficially interested in the trust was *granted.*

The late George Whyte of Meethill, Aberdeenshire, died in April 1869, leaving a trust-disposition and settlement under which, upon the death or second marriage of his wife, his trustees were directed to pay to his three daughters Mary Logan Whyte, Phillis Whyte, and Fanny Whyte the sum of £1000 each, or in their discretion to make these provisions real burdens upon his heritable estate. The residue of his estate was to be held for behoof of his son George Whyte, one of the trustees. His widow died on 18th January 1887, survived by the three daughters and the son.

In 1882 the estates of the son George Whyte were sequestrated, and in the course of the sequestration his whole right to the residue of the trust-estate was assigned to David Hill Murray, S.S.C., Edinburgh. This assignation he ineffectually sought to reduce after obtaining his discharge.

In 1885 the trust-estate was sequestrated and a judicial factor appointed thereon, but on 10th January 1891 the factory was recalled and George Whyte resumed the management of the trust-estate, being the sole accepting and surviving trustee. Thereafter his sisters having failed to obtain payment of their provisions, brought an action of declarator against him to have these provisions constituted real burdens on the trust-estate. Decree in their favour was pronounced by Lord Stormonth Darling on 23rd June 1891 (after-

wards approved by the First Division), but this decree Whyte failed to implement, and on 26th June 1891 a petition was presented to the First Division by his three sisters, with the concurrence of the said David Hill Murray and certain heritable creditors upon the trust-estate, to have him removed from the office of trustee and a judicial factor appointed.

Answers were lodged by the trustee.

In support of the petition it was argued—(1) The trustee had failed to implement the provisions of the trust-deed. (2) All the parties beneficially interested in the trust-estate were parties to this petition for his removal. (3) The factory had been recalled upon a misrepresentation of facts on the part of the trustee. (4) He had no longer any beneficial interest in the estate. (5) He had impoverished the estate by a course of protracted and unnecessary litigation. (6) He was again a notour bankrupt. (7) He was now resident in London and unable to look after the estate.

Argued by the respondent—(1) He had not maladministered the estate. (2) He was still willing to constitute his sisters' provisions real burdens on the estate. (3) He had abstained from doing so in their own interests. (4) They were tools in the hands of others against whom he was protecting them. (5) They were not the true petitioners, but had been got to lend their names to this petition in order to benefit others.

At advising—

LORD PRESIDENT — The respondent's father left three daughters who were each to get £1000 under his trust-disposition and settlement. He directed his trustees to pay these provisions on the death or second marriage of his wife, or to secure them by constituting them real burdens upon his heritable estate. Now, it does not admit of dispute that the respondent—the sole surviving and accepting trustee—has done neither of these things. He has suggested that the second course may yet be adopted, and he submits that if the provisions are constituted real burdens, the grounds for this petition will be removed. I do not follow that reasoning. The testator died in 1869 and his widow in 1887, and the offer now made certainly does not embrace the payment of byegone interest, of which not one penny has been paid. Putting aside the utter failure of the respondent as trustee to follow out the directions of the truster—which is a grave offence on the part of the respondent quite sufficient to justify his removal, especially as we know that his affairs are not in a satisfactory condition, and he would for his own sake, I imagine, be better out of it, although that perhaps is irrelevant—we have this important consideration, that the whole parties interested, namely, his sisters and the assignee to the residue of the estate which was originally left to the respondent himself, petition for his removal. That I consider a sufficient reason for removing him without imputing blame on his part. When all the parties interested combine in asking to get rid of a trustee, we have a strong case for his removal. I do not say that in all circumstances that would hold as a good ground for such a petition being granted. There might be cases where a family compact might be formed in order to compel a trustee to resign, and if there were any suggestion of such a combination here I should refuse the petition. But here a grave offence is alleged, all the parties interested combine to petition for the trustee's removal, and I see no reason as the case stands why we should not sequestrate the estate, remove the trustee, and appoint the gentleman suggested judicial factor *ad interim*. It will remain open to the Junior Lord Ordinary or the Lord Ordinary on the Bills to appoint him permanently, or to supersede his appointment by that of anyone he may consider more suitable.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

Counsel for the Petitioners—C. K. Mackenzie. Agents—Welsh & Forbes, S.S.C.

Counsel for the Respondent—Party.

Saturday, July 18.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

THAIN *v.* THAIN.

Title—Trust—Heritable or Moveable—Spes successionis — Deathbed — Adverse Title Made up by Accepting Trustee.

In 1846, T. T., being heir-presumptive to his brother, who was under curatory, in the estate of Arthurbank, disponed his *spes successionis* in that estate to his cousin D. T. and his heirs and assignees whomsoever. D. T. died in 1850, having executed a trust-disposition the day before his death, by which he conveyed his whole estate, heritable and moveable, including Arthurbank, to trustees, of whom his brother A. T. was one, under a declaration that Arthurbank was to go to his brother A. T. in liferent and to his natural son D. in fee. A. T. accepted the trusteeship and carried out its duties in other respects, but having been advised that the disposition of Arthurbank was ineffectual as having been executed on deathbed, he proceeded to make up his title to that estate as D. T.'s heir-at-law without bringing any action of reduction of the deed *ex capite lecti*. He obtained in 1852 from T. T., whose brother had died intestate, a disposition of Arthurbank which recited the previous disposition of 1846, he duly completed his title to that estate, and he possessed it as fee-simple proprietor until his death in 1890. At the time of his death he was the sole surviving trustee of his brother D. T.