a valuation. But we are not concerned with English law or English usages.

What we really have to decide is whether the word "arbitration" in the 11th section of the Act covers such a reference as that in the present lease according to the Scottish legal terminology. In a point of this kind I think your Lordships will be disposed to pay a very especial attention to the opinion of the learned Judges in Scotland whose experience has brought them into such close familiarity with such questions. I own that to my mind, unconsciously influenced, it may be, by the English authorities, the clause does not look like arbitration. But I deliberately defer to the First Division unless clear authority can be cited to show that it is erroneous.

I do not find such clear authorities. There are cases in which the difference is pointed out between appraisement and a strictly arbitral proceeding. But in many passages the word arbitration is used to cover all kinds of reference. And when every allowance is made for the inevitable laxity with which convenient general words are applied without prejudice to closer distinctions which do not need to be regarded in the particular case, I am unable to say that upon the authorities the word arbitration is inapplicable to a clause of this kind.

Accordingly I move your Lordships to dismiss this appeal.

EARL OF HALSBURY—I am entirely of the same opinion, and I am bound to say I think I go perhaps a little further than the Lord Chancellor, because I believe that the word "arbitration" has an ordinary meaning in the English language which prevails both in Scotland and in England. I think it means something which is submitted to the arbitrament, to the adjudication, of private persons agreed upon by the parties, as distinguished from the ordinary courts of law, and it appears to me that the meaning and object of the Statute of 1908 was to sweep away that which must have been well known to those who framed the Act, that in the ordinary course of things in Scotland this particular question of taking over the stock and valuing it, and so on, was a subject which the parties have agreed upon, that in making their leases it is the ordinary and customary mode of dealing with the question which would inevitably arise between the person who is taking the stock and the person who is to pay for the stock when he takes it, as to what money was to be paid for it.

Looking at the language of these leases generally, and certainly the particular one which we have to construe to-day, it is that there are to be persons mutually chosen. I notice that the word "skilled" is introduced more than once in some of the judgments; I think that is a little inaccurate; there is no such word in the lease, nor is there any such word in the statute. The question here is simply whether or not the clause in this lease comes within the words of the statute. Now whatever may be said about the policy of it, or whether or not it would have been better to allow that which people in Scotland have found to be convenient—that two neighbours or friends should adjudicate upon the matter—we have nothing to do with that in the sense of the policy of the Act, except so far as it enables us to construe the language of the Act. Our duty is to construe the language in its ordinary and natural meaning—to give effect to what the Legislature intended. We have nothing to do with the question whether or not it was a desirable Act to pass. The question here is, what is the meaning of it; and to my mind it is beyond all doubt that what the Legislature intended was to sweep away all these private arbitraments which the parties have themselves agreed upon, and to determine that there should be one uniform form of procedure. Once we have arrived at that as being the intention of the Legislature we have nothing more to do than to give effect to it. I am of opinion that that was the meaning—that that was what the statute intended, and what it has done by very intelligible language. I am therefore entirely of the same opinion as the Lord Chancellor has expressed, and I agree in the motion which he has made.

LORD ATKINSON—I concur. It appears to me that, in face of the numerous Scotch authorities which have been cited, it is impossible to hold that according to the procedure and nomenclature adopted in judicial proceedings in Scotland this is not an arbitration. That being so, I concur in the decision of my noble and learned friend on the Woolsack.

LORD MERSEY—I concur.

Their Lordships dismissed the appeal with expenses.

Counsel for Appellant—Lord Advocate (Ure, K.C.)—Macmillan. Agents—Connell & Campbell, S.S.C., Edinburgh — Roche, Son, & Neale, London.

Counsel for Respondent—Clyde, K.C.—Mercer. Agents—Hamilton, Kinnear, & Beatson, W.S., Edinburgh — Stileman & Neate, London.

COURT OF SESSION.

Thursday, March 17.

SECOND DIVISION.

ALEXANDER'S TRUSTEES *v.* ALEXANDER'S MARRIAGE-CONTRACT TRUSTEES.

(*Vide Inland Revenue* v. *Alexander's Trustees*, Jan. 10, 1905, *ante* vol. xlii, 307, and 7 F. 367.)

Revenue—Estate Duty—Apportionment—Marriage-Contract Provision — Sum Charged on Heritable Estate—Trust-Disposition and Settlement — Incidence of Duty—Finance Act 1894 (57 *and* 58 *Vict. cap.* 30), *secs.* 7 (1) *and* 14 (1).

A, by obligation in his son's antenuptial contract, undertook to pay to the trustees under the contract the sum of £30,000 and to grant security for the payment thereof by means of a bond and disposition in security over his estate of B. In implement of the said obligations he, in 1889, bound himself, his heirs, executors, and representatives, by bond and disposition and assignation in security, to pay to the trustees the sum of £30,000, and conveyed to them in security the estate of B. He died in 1899. By his trust-disposition and settlement he directed his trustees to hold the lands of B and the whole residue of his estate for his said son in liferent and his grandson in fee. The testamentary trustees paid estate duty on the whole estate of B without any deduction being made in respect of said sum of £30,000, to the capital of which the the marriage-contract trustees were entitled.

In a Special Case between the testamentary trustees and the marriage-contract trustees, *held* that section 14 (1) of the Finance Act 1894 applied, and that the testamentary trustees having paid estate duty on the whole estate of B, without deduction of the sum of £30,000 charged thereon, were entitled to recover from the marriage-contract trustees an amount equal to the proper rateable part of the estate duty in respect of the sum charged.

The Finance Act 1894 (57 and 58 Vict. c. 30) section 7, enacts — "(1) In determining the value of an estate for the purpose of estate duty, allowance shall be made . . . for debts and incumbrances; but an allowance shall not be made (*a*) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest . . . and any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto."

Section 14—"(1) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the estate duty may be recovered by the person who, being authorised or required to pay the estate duty in respect of any property, has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise) under a disposition not containing any express provision to the contrary."

This was a Special Case to which the parties were the trustees of the late Major-General Sir Claud Alexander of Ballochmyle, Baronet, *first parties*, and the trustees under the antenuptial contract of marriage between Sir Claud Alexander of Ballochmyle (then Claud Alexander, younger of Ballochmyle) and Lady Diana Montgomerie, daughter of the Earl of Eglinton, *second parties*.

The following statement is taken from the Special Case:—"(I) By antenuptial contract of marriage entered into between Sir Claud Alexander of Ballochmyle, in the county of Ayr, Baronet (then Claud Alexander, younger, Esquire of Ballochmyle), only son of Major-General Sir Claud Alexander of Ballochmyle aforesaid, Baronet, on the one part, and the Right Honourable Lady Diana Montgomerie, youngest daughter of the then Earl of Eglinton and Winton (with consent therein mentioned), on the other part, the said Major-General Sir Claud Alexander bound and obliged himself, and his heirs, executors, administrators, and successors whomsoever, renouncing the benefit of discussing them in their order, to make payment upon the solemnisation of the marriage to the persons named as trustees under the contract of a capital sum of £30,000 as a provision for the said intended spouses and the child or children of their marriage. He also bound himself to grant security for the payment thereof by means of a bond and disposition and assignation in security over his estate of Ballochmyle, to be executed by him of even date with said contract. The purposes for which the said sum of £30,000 were to be held were (1) payment of the trust expenses, (2) payment of the income or annual proceeds of said sum to the said Sir Claud Alexander during his life, (3) payment out of said income or annual proceeds to the said Lady Diana Montgomerie during her life if she should survive her husband of a free alimentary annuity of £750, and (4) subject to these provisions the trustees were directed to hold the said capital sum or provision of £30,000 and income thereof for behoof of the child or children of the said intended marriage, and the survivors and survivor of them, and the lawful issue of predeceasers leaving issue, and failing a a child or children of the said marriage and their issue the said sum or provision of £30,000 and the interest or income thereof was directed to be paid and made over to the survivor of the said deceased Major-General Sir Claud Alexander and his son the said Sir Claud Alexander, or to the heirs or assignees of such survivor. The said contract contained a provision and declaration that the trustees should not be entitled to demand or require payment during the lifetime of the said Major-General Sir Claud Alexander of the said capital sum or provision of £30,000 while and so long as he regularly paid to his son the said Sir Claud Alexander, or to the trustees of the said contract, the sum of £1000 per annum in half-yearly or quarterly portions, to which sum of £1000 the annual interest of said provision was limited and restricted during the lifetime of the said Major-General Sir Claud Alexander. The said contract also contained a stipulation that the trustees thereof should, if requested by the said Major-General Sir Claud Alexander, or his heirs, executors, administrators, and successors, be entitled

at any time or times, if they deemed it advisable and proper to do so, to release from the security constituted by said bond and disposition and assignation in security any parts and portions of the lands and others therein contained, and also to accept in lieu of said security any other security that they might consider equally sufficient and satisfactory. The said marriage was duly solemnised. The only child of said marriage (which was dissolved at the instance of the husband on 19th July 1894 by decree of divorce of the Court of Session) is Wilfrid Archibald Alexander, who is in minority. (II) In implement of obligations undertaken by him in said marriage contract, the said deceased Major-General Sir Claud Alexander, by bond and disposition and assignation in security dated 6th December 1889 and recorded in the Division of the General Register of Sasines applicable to the county of Ayr on the 13th day of January 1890, bound himself, and his heirs, executors, and representatives whomsoever, to make payment to the trustees acting under that contract of the sum of £30,000, and conveyed to them in security certain lands and others forming the estate of Ballochmyle. The said bond and disposition and assignation in security was and bore to be granted in fulfilment of the granter's said obligation to grant security and in implement thereof. It was duly delivered to the parties of the second part. (III) The said Major-General Sir Claud Alexander died on the 23rd day of May 1899 leaving a trust-disposition and settlement, dated 29th February 1888, and three relative codicils, dated respectively 28th May 1888, 14th December 1892, and 11th February 1896, and all recorded in the Books of Council and Session on 5th June 1899. By said trust-disposition and settlement and codicils the said Major-General Sir Claud Alexander conveyed to certain trustees, who were also appointed his executors, all and sundry his whole means and estate, real and personal, belonging to him, or subject to his disposal at the time of his death. The purposes of the trust were the payment of debts and expenses, the payment of certain bequests to his widow and others, and a direction to his trustees to hold the lands of Ballochmyle and others, and the residue of his whole means and estate after implementing or providing for the prior purposes of the trust, in trust for Sir Claud Alexander, his son, in liferent allenarly, and for his grandson the said Wilfrid Archibald Alexander and the heirs of his body in fee, whom failing other substitute heirs. (IV) Upon Major-General Sir Claud Alexander's decease the parties of the first part, as his executors, gave up an inventory of his personal and moveable estate (which, after deduction of debts, amounted to £96,193, 12s. 1d.), and in appropriate accounts annexed thereto specified the other property (including the estate of Ballochmyle) in respect of which estate duty was payable. Thereafter as trustees and accountable persons within the meaning of the Finance Act 1894, the parties of the first part gave up an account for payment of the estate duty on the estate of Ballochmyle, and in bringing out the net principal value thereof for assessment to duty claimed a deduction on account of the said sum of £30,000 as being a debt or encumbrance thereon constituted by the deceased's said bond and disposition and assignation in security. This deduction was not allowed by the Crown, on the ground that the trustees were not entitled thereto under the Finance Act 1894 and amending Acts, and the Court upheld this view — *Inland Revenue* v. *Alexander's Trustees*, 1905, 7 F. 367. Subsequently a corrective account was given up without any deduction being made in it in respect of said sum of £30,000."

The *contentions* of the parties were thus set forth in the Special Case—"The parties of the first part contend that they are entitled to recover under said section from the parties of the second part payment of an amount equal to the proper rateable part of the estate duty paid on the death of the said Major-General Sir Claud Alexander, Bart., in respect of the said estate of Ballochmyle, no express provision to the contrary being contained in the said antenuptial contract of marriage or bond and disposition and assignation in security. The second parties maintain that the said sum of £30,000 contained in the said bond and disposition and assignation in security is not a 'sum charged' on the said estate of Ballochmyle within the meaning of the Finance Act 1894, section 14, sub-section 1, and that they are not liable to make payment to the first parties of any rateable part of said estate duty in respect of the lands and others conveyed in security of said sum."

The *questions of law* were — "(1) Are the parties of the second part, as the holders of the said bond and disposition and assignation in security, persons entitled to a sum charged on the said estate of Ballochmyle within the meaning of section 14, sub-section (1), of the Finance Act 1894? (2) Are the parties of the first part entitled under said section to recover from the parties of the second part an amount equal to the proper rateable part of the estate duty paid on the death of the said Major-General Sir Claud Alexander, Bart., in respect of the said estate of Ballochmyle?"

Argued for the first parties—It had been decided that estate duty was exigible by the Crown upon the whole estate, and that the £30,000 could not be deducted in calculating it—*Inland Revenue* v. *Alexander's Trustees*, January 10, 1905, 7 F. 367, 42 S.L.R. 307. The case of *Hacket* v. *Gardiner*, [1907] 1 Ch. 385, was precisely in point. The question had therefore been decided in England in favour of the first parties' contention. The payment of the rateable part of the estate duty was a burden which had been imposed by statute on the marriage-contract trustees. They must discharge it—Bell's Prin., sec. 121. There was no stipulation here that the provision should be

free of duty—*in re Parker-Jervis*, [1898] 2 Ch. 643. *Berry* v. *Gaukroger*, [1903] 2 Ch. 116 (*per* Vaughan Williams, L.J., at 131), was also referred to.

Argued for the second parties — The £30,000 was a debt due by the testator to the second parties. Section 7 (1) of the Finance Act provided that in estimating the value of the property which was to pay estate duty, allowance should be made for debts. No doubt it had been held in *Inland Revenue* v. *Alexander's Trustees* (*sup. cit.*) that the £30,000 was not a debt which the first parties were entitled to deduct in ascertaining the value of the testator's estate for estate duty purposes, but that did not mean that it should not be regarded as a debt when the question was whether the creditors should relieve the representatives of the debtor of the proportion of the duty applicable to the amount of the debt. Further, the last words of sec. 14 (1) of the Finance Act showed conclusively that the sub-section did not apply to the case of debtor and creditor, because it was an unheard-of thing to have a stipulation in a document of debt that the creditor should not pay any part of the debtor's death duties. Reference was made to *Wade* v. *Wade*, [1890] 2 Ch. 276, and to *in re Trenchard*, [1905] 1 Ch. 82.

At advising—

Lord Low—It seems to me that every circumstance required to bring section 14 (1) of the Finance Act 1894 into operation is present in this case. In the first place, Ballochmyle was a property which did not pass to the late Major-General Sir Claud Alexander's executor as such. In the second place, the first parties (Sir Claud's testamentary trustees) were persons authorised or required to pay estate duty in respect of Ballochmyle (section 8 (4) of Finance Act). In the third place, the sum of £30,000 in question was charged on the estate of Ballochmyle. In the fourth place, the second parties (the marriage-contract trustees of the present Sir Claud Alexander) are entitled to the capital of the £30,000, and in the fifth place they are so entitled under a disposition—namely, the bond and disposition in security in their favour—which does not contain any express provision to the effect that the £30,000 shall be free of duty.

In these circumstances the present case *prima facie* falls within the scope of section 14 (1), and if so the first parties are entitled to recover from the second parties an amount equal to the proper rateable part of the estate duty paid by the first parties in respect of the estate of Ballochmyle.

It was argued, however, that the case does not fall within the enactment, because (1) the £30,000 was not a "sum charged on" Ballochmyle within the meaning of the section; and (2) that the £30,000 was a debt by the late Sir Claud Alexander to the second parties, and the enactment does not apply to debts.

In regard to the first point, I think that it is clear that the £30,000 was charged upon the estate. If a sum secured upon an estate by bond and disposition in security is not "charged on" that estate, I have difficulty in knowing to what that expression can apply.

The second point requires more consideration. No doubt the £30,000 was at common law a debt due by the late Sir Claud Alexander to the second parties, and accordingly it was argued that section 14 (1) could not apply, because a creditor was entitled to have his debt paid in full, and the Legislature could not have intended to compel a creditor to pay part of the death duties of his deceased debtor. Further, the last words of the section showed that it did not apply to the case of debtor and creditor, because no one ever heard of a stipulation being inserted in a document of debt that the creditor should not pay any part of the debtor's death duties.

I recognise the force of that argument, but it is to be remembered that we are here construing an Act of Parliament which establishes certain arbitrary rules which are to regulate liability for payment of a tax. Unless, therefore, in the case of an ambiguous clause which is susceptible of two meanings, I do not think that considerations of what is fair and reasonable, or what might have been expected, have any place.

Now by section 7 (1) of the Act it is provided that in estimating the value of the property which is to pay estate-duty, allowance shall be made for "debts," but only if they were incurred for full consideration in money or money's worth wholly for the deceased's own use and benefit. Accordingly it was held in *Inland Revenue* v. *Alexander's Trustees*, 7 F. 367, that the £30,000 did not constitute a debt which the late Sir Claud's trustees were entitled to deduct in ascertaining the value of his estate. In other words, the £30,000 was held not to be a debt for the purposes of the Act, but estate passing on the death of Sir Claud.

It may be said, however, that although the Legislature thought fit to enact that such a debt should not be regarded as being a debt at all when the question was the amount of the estate of the debtor upon which duty fell to be paid, it did not follow that it should also be regarded as not being a debt when the question was whether the creditor should relieve the representatives of the debtor of the proportion of the duty applicable to the amount of the debt. That is quite true; but it must be kept in mind that although the obligation of the deceased to pay £30,000 to the second parties, being undertaken for an onerous consideration, created a debt, the object for which the obligation was undertaken was to make a family provision—the father desired to make a provision for his son and that son's children. From that point of view it seems to me to be quite intelligible that it should be enacted that the amount of the estate duty applicable to the provision should be ultimately borne by the persons to whom the beneficial interest passes; and further (in reference to the argument upon the last clause of the section), I see no reason why,

in such a case as the present, it should not be stipulated that the provision is to be free of duty.

My brother Lord Salvesen has been good enough to call my attention to the judgment of North, J., in the case of *Gray* v. *Gray* [1896], 1 Ch. 620. The circumstances of that case were substantially identical with those of the present case, with this difference, that the marriage-contract provision was not charged upon any particular property. That difference, however, seems to me to be essential, because the fact that the provision was not charged upon any particular property rendered section 14 (1) of the Act inapplicable. It therefore seems to me that the judgment in *Gray* has no bearing upon the present question.

The conclusion, therefore, at which I arrive is that, all the requirements of section 14 (1) being present in this case, no sufficient reason has been shown for refusing to give effect to that section. I am accordingly of opinion that both the questions should be answered in the affirmative.

LORD SALVESEN—I have had an opportunity of reading Lord Low's opinion in this case, and concur in the result at which he has arrived. My only doubt arises from the fact that the marriage-contract trustees not merely had a security over real estate of the late Major-General Sir Claud Alexander, constituted by bond and disposition in their favour, but that they had also his personal obligation for the amount contained in the bond. In the case of *Gray* v. *Gray*, to which reference has already been made, it was held that where the marriage-contract provision was constituted merely by a personal obligation, the creditors were entitled to have the full amount of the debt paid at the debtor's death without any deduction of duty under the Finance Act. It seems anomalous that a creditor in exactly the same position, except that in addition to the personal obligation he holds a security over heritable estate belonging to his debtor, should be thereby so much the worse than an unsecured creditor that he must suffer abatement of his debt to the extent of the duty exigible on £30,000, which we were told amounts to the very substantial sum of £1500. It is, however, no reason for not applying section 14 (1) that it may disclose anomalies of this kind if the conditions required to bring it into operation are all present as they seem to be in this case. In *Hasket* v. *Gardiner* [1907], 1 Ch. 385, a very similar question arose, and it was strongly contended that the contention of the plaintiffs there, who were the executors of the deceased, "would lead to this curious result, that the persons entitled to the sum of £25,000 secured by the covenant of the testator would, if he died having only real estate, have recourse to the real estate for the full amount of the debt, and would not have to bear any part of the duty, whereas the persons entitled to a similar sum charged on real estate by a testator who had no personalty would have to bear a proportionate part of the duty." This argument was, however, rejected by Joyce, J., who held that section 14 (1) did include the particular case. Thus the only argument for the marriage-contract trustees which I thought worthy of serious consideration has been expressly held to be untenable in England, and although I do not agree with the learned Judge in the Chancery Division in holding that there would have been a defect in the legislation with respect to estate duty if the consequence for which the testamentary trustees here contend did not result, I find myself unable to construe the section as not including such a case as the present.

LORD JUSTICE-CLERK—I concur in the opinion delivered by Lord Low, which I have had an opportunity of reading.

LORD ARDWALL and LORD DUNDAS were absent.

The Court answered both questions of law in the affirmative.

Counsel for the First Parties—Johnston, K.C.—Spens. Agents—A. & A. Campbell, W.S.

Counsel for the Second Parties—Chree—Mitchell. Agents—Hugh Martin & Wright, S.S.C.

Friday, March 18.

FIRST DIVISION.

(Along with Four Judges of the Second Division.)

[Sheriff Court at Wick.

TAYLOR (POOR) *v.* SUTHERLAND.

Sheriff — Process — Jury Trial in Sheriff Court—Ambiguous or Inconsistent Verdict—Appeal—New Trial—Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, cap.* 51), *sec.* 31.

In a jury trial under the Sheriff Courts (Scotland) Act 1907 the questions put by the Sheriff-Substitute and the answers returned thereto by the jury included the following:—Ques. 2—Whether the pursuer was in the employment of, and performing work for, the defender, and acting under his instructions at the time when he received the said injuries? Ans. 2—The second question in the affirmative. Ques. 3—Whether the said injuries were caused by the fault or negligence of the defender, and if so in what did that fault or negligence consist? Ans. 3—The first part of the third question in the affirmative in respect that the defender in assisting the railway company in shunting the trolley on which the mill was placed failed to explain to the pursuer that it was no part of his duty to assist in that operation. Ques. 4—Whether the said injuries were caused, or at least