agreed that the practice which they were constrained to confirm was an "irrational practice." In those circumstances I do not think any court of law should extend a practice which has been thus judicially condemned on account of its irrationality. This office or right is one of those things which in my opinion is not by its nature adjudgable. The idea that it could be swept up in bankruptcy and say that a purchaser should be able to buy at the market cross of Edinburgh the office of being Standard Bearer to the Sovereign in time of war need not be further remarked upon. In the circumstances mentioned the title of Lord Lauderdale entirely fails. I add, that for myself I have the greatest doubt as to certain procedure in this litigation. I refer to that which began with an interlocutor of Lord Kyllachy which has resulted in great expense to both parties, and which gave Lord Lauderdale, though he had no right whatever unless he could prove that he held a thing which was in its essence adjudgable, a position which entitled him to call upon the Scrymgeours to prove every item of their succession from their ancestor in 1600.

If Lord Lauderdale's title fails, I think the demand which was made that the Scrymgeours should enter into this expensive litigation was a demand which is not really justifiable; but with regard to what they have done in consequence may I tender my respectful assent to the views of my noble and learned friend on the Woolsack. We are not deciding the question, but so far as the facts and pedigrees have been elucidated before this House it appears to me there is a sufficiency of legal evidence even in the sense that has been so ably argued by Mr Wedderburn, viz., that his client has proved his descent as heir-male under the Act of 1600.

Their Lordships reversed the order appealed against and found the appellant entitled to expenses both in the House of Lords and in the Court below.

Counsel for Appellant — Wedderburn, K.C. — J. H. Stevenson. Agents — D. M. Gibb & Sons, S.S.C., Edinburgh—A. & W. Beveridge, London.

Counsel for Respondent—Sir R. Finlay, K.C., M.P. — Macphail. Agents — Tods, Murray, & Jamieson, W.S., Edinburgh—John Kennedy, W.S., London.

Friday, April 29.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lord Atkinson, and Lord Mersey.)

STEWART *v.* WILLIAMSON.

(*Ante*, July 13, 1909, 46 S.L.R. 918, and 1909 S.C. 1254.)

Lease—Outgoing—Arbitration—Valuation of Sheep Stock—Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, c. 61), sec. 11 (1) — *Abrogation of Reference in Lease and Substitution of Reference in Statute.*

The Agricultural Holdings (Scotland) Act 1908, section 11 (1), enacts—"All questions which under this Act or under the lease are referred to arbitration shall . . . be determined, notwithstanding any agreement under the lease or otherwise providing for a different method of arbitration, by a single arbiter in accordance with the provisions set out in the second schedule to this Act."

A lease of a sheep farm for five years expiring at Whitsunday 1909. provided that at the expiry of the lease "the tenant shall leave the sheep stock on the farm to the proprietors or incoming tenant according to the valuation of men mutually chosen, with power to name an oversman."

Held that the Act applied, and that a single arbiter fell to be appointed.

This case is reported *ante ut supra*.

The pursuer Stewart appealed to the House of Lords.

At delivering judgment –

LORD CHANCELLOR—Your Lordships are asked to decide whether a clause in a lease dated 1884 has been superseded by the provisions of the Agricultural Holdings Act 1908. The clause runs as follows:—"John Stewart hereby binds and obliges himself at the expiry of this lease to leave the sheep stock on the farm to the proprietors or incoming tenant according to the valuation of men mutually chosen, with power to name an oversman."

Is this superseded by the words of the 11th section, which I cite so far as material—"All questions which under this Act or under the lease are referred to arbitration shall . . . be determined, notwithstanding any agreement under the lease or otherwise providing for a different method of arbitration, by a single arbiter, in accordance with the provisions set out in the second schedule to this Act."

If this were an English case the authorities decided on the Common Law Procedure Act 1854 draw a marked distinction between arbitration and valuation. It is one thing to refer a dispute to the decision of an arbitrator who has to hear parties and witnesses as in a court of law. It is another thing to say that a third person shall value the subject of sale, as when an incoming tenant agrees to buy fixtures at

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).