

Friday, January 29.

FIRST DIVISION.

LAMONT AND ANOTHER (LAMONT'S TRUSTEES) v. JACKSON.

Process — Appeal — Bankruptcy — Appeal under Bankruptcy Act — Boxing of Prints — Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79), sec. 170 — Court of Session Act 1868 (31 and 32 Vict. c. 100), sec. 71 — Act of Sederunt 10th March 1870, sec. 3.

Held that the Act of Sederunt of 10th March 1870 was not applicable to appeals under the Bankruptcy Act, and consequently that the prints in such appeals did not require to be boxed within fourteen days after the process had been received by the Clerk of Court.

Charles Lamont, marine insurance broker, Glasgow, and Mrs Agnes Mitchell or Lamont, his wife, both residing at 24 Battlefield Avenue, Langside, Glasgow, as trustees or administrators of their daughter Louie E. M. Lamont, appealed against a deliverance of Sheriff-Substitute (Balfour), dated 31st December 1903, pronounced by him in the Sheriff Court at Glasgow in the process of sequestration of the estates of Ferguson, Lamont, & Company, marine insurance brokers, Glasgow, and Charles Lamont, the sole surviving partner thereof. By this deliverance the Sheriff had dismissed an appeal by the appellants against a deliverance of the trustee in the sequestration, Thomas Jackson, C.A., Glasgow, ranking the Bank of Scotland as a creditor entitled to the dividend declared on the sequestrated estates in respect of certain claims.

On the appeal appearing in the Single Bills, counsel for the trustee objected to its competency, on the ground that the prints had not been boxed within fourteen days after the process had been received by the Clerk of Court, as required by the Act of Sederunt of 10th March 1870, section 3, which proceeds upon the Court of Session Act 1868, section 71.

The Court of Session Act 1868 (31 and 32 Vict. c. 100) enacts—"VII. Appeals from Inferior Courts." Sec. 64—"The process of advocacy is hereby abolished." Section 65—"Wherever according to the present law and practice it is competent to advocate to the Court of Session a judgment (final or not final as the case may be) of any sheriff or other inferior court or judge, it shall be competent, except as hereinafter provided, to submit such judgment to the review of the Court of Session by appeal in the manner hereinafter provided." . . . Section 71—"Within two days after the appeal shall have been taken, the clerk of the inferior court shall transmit the process to one of the clerks of the Division of the Court to which the appeal is taken, who shall subjoin to the appeal a note of the day on which it is received, and it shall be lawful for either the appellant or the respondent, at any time after the expiry of eight days from the date of such note, to enrol the appeal, and when the appeal is

called in the roll it shall be competent for the Court to order the whole inferior court record and the interlocutors *in causa*, and note of appeal and notes of the evidence and productions, if any, to be printed and boxed to the Court, or the Court may dispense with the printing and boxing of any portions of the same; and in case the record and other papers ordered to be printed shall not be printed and boxed by the appellant, or in case he shall not move in the appeal, it shall be lawful for the Court, on a motion by any other party in the cause, either to dismiss the appeal with expenses and to affirm the interlocutor of the inferior court, or to grant an order authorising the party moving to print and box the record and other papers aforesaid, and to insist in the appeal as if it had been taken by himself."

The Act of Sederunt of 10th March 1870, section 3, enacts—"That the course of proceeding prescribed by the 71st section of the said statute shall be altered to the following extent and effect:—(1) The appellant shall, during session, within fourteen days after the process has been received by the Clerk of Court, print and box the note of appeal, record, interlocutors, and proof, if any, unless within eight days after the process has been received by the Clerk he shall have obtained an interlocutor of the Court dispensing with printing in whole or in part; in which case the appellant shall only print and box as aforesaid those papers the printing of which has not been dispensed with, and if printing has been in whole dispensed with, shall lodge with the Clerk of Court a manuscript copy of the note of appeal, furnishing another copy to the Clerk of the Lord President of the Division; and if the appellant shall fail within the said period of fourteen days to print and box or lodge and furnish the papers required as aforesaid, he shall be held to have abandoned his appeal, and shall not be entitled to insist therein except upon being reponed as hereinafter provided."

The Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79), section 170, enacts—"It shall be competent to bring under review of the Inner House of the Court of Session, or before the Lord Ordinary in time of vacation, any deliverance of the Sheriff, after the sequestration has been awarded (except where the same is declared not to be subject to review), provided a note of appeal be lodged with and marked by the Sheriff-Clerk within eight days from the date of such deliverance, failing which the same shall be final." . . .

Argued for the respondent (the trustee) —This appeal was brought under section 170 of the Bankruptcy Act. That section made no provision for boxing prints of the case, or the period within which that must be done. The ordinary practice therefore in other appeals from the Sheriff Court to the Court of Session must be followed, and the provisions as to boxing were to be found in the Act of Sederunt of 10th March 1870, section 3, which came in place of the 71st section of the Court of Session Act

1868. By it the prints required to be boxed within fourteen days after the process had been received by the Clerk of Court, under penalty for failure of the appeal being dismissed. Here it was admitted the prints had not been boxed within that time. The appeal should therefore be dismissed.

Argued for the appellants—There was no flaw in the proceedings in this appeal, for there was no period fixed within which prints must be boxed in this class of appeal. The procedure was laid down in the section of the Bankruptcy Act, and its requirements had been fully observed. It was impossible to import the requirements of the Court of Session Act 1868, for it dealt only with appeals by way of advocacy. Appeals in bankruptcy cases, however, had never come to the Court of Session by way of advocacy, and it therefore was inapplicable. The Act of Sederunt was merely in substitution so far of the provisions of the Court of Session Act, so that it also was inapplicable. That this was so was demonstrated by the fact that bankruptcy appeals under the 1856 Act had been in existence for twelve years before the procedure now suggested as necessary had been established.

LORD PRESIDENT—I think, for the reasons suggested in the course of the argument, that the provisions relied on by Mr Moncreiff do not apply to this case. It was maintained that if not directly applicable, they should be applied by some sort of analogy; but I am unable to assent to this contention. I am therefore of opinion that the objections to the competency of this appeal should be repelled.

LORD ADAM—I agree. The provisions of the Court of Session Act 1868 and the Act of Sederunt of 10th March 1870 have no application.

LORD M'LAREN—The only appeals with which the Court of Session Act 1868 is concerned are those which are substituted for the process of advocacy, which was the ordinary process for bringing Sheriff Court judgments under review prior to the introduction of the simpler form. Now appeals from interlocutors in bankruptcy proceedings never came here by advocacy. I think, therefore, that neither the Court of Session Act of 1868 nor the Act of Sederunt of 10th March 1870 have any application.

LORD KINNEAR—I agree with your Lordships.

The Court dismissed the objection and sent the case to the Summar Roll.

Counsel for the Appellant—Spens. Agent—A. W. Grant.

Counsel for the Respondent (the Trustee)—Alex. Moncreiff. Agents—Webster, Will & Co., S.S.C.

Friday, January 29.

SECOND DIVISION.

CRAIGIE'S TRUSTEES v. CRAIGIE.

Husband and Wife—Jus Relictæ—Election—Widow Claiming Legal Rights in place of Provision under Husband's Settlement—Pension to Widow from Military Fund Subscribed to by Husband.

Held (dub. Lord Young) that the widow of an officer on claiming her legal rights in her husband's estate in place of the provisions under his trust disposition and settlement was not bound to account to the estate for her pension from a military fund subscribed to by the husband during his life, but was entitled to her *jus relictæ* in addition to the pension.

Major William Burnet Craigie was married to Mary Ada Fleming on 11th October 1882. No antenuptial contract was entered into between the spouses, but by a letter dated 4th October 1882, addressed to Miss Fleming's father, Major Craigie agreed in anticipation of his marriage to continue to subscribe to the Bengal Military Fund during her lifetime in order to entitle her to a pension on widowhood. In implement of this agreement Major Craigie subscribed to the fund with the result that at his death in 1903 Mrs Craigie became entitled to a pension of £187, 4s. 8d. out of that fund during her widowhood.

Major Craigie died on 31st March 1903, survived by his wife and two daughters, aged 18 and 12 years. He left a trust disposition and settlement, dated 23rd November 1882, with four codicils thereto, by which he conveyed his whole means and estate to trustees. By the settlement the trustees were (1) to set aside a sum sufficient to yield an annuity of £113 or such other sum less or more as should be necessary along with the pension from the Bengal Military Fund to make up an annual sum of £300 to be enjoyed by Mrs Craigie during widowhood; (2) to pay the residue of the estate, including the sum set apart for payment of the annuity to Mrs Craigie when the sums should be set free, to and among the children of the marriage, the shares of daughters vesting only on their attaining majority or being married; and (3) in the event of the children predeceasing the period of vesting to pay a legacy of £1000 to Miss Margaret Stewart Burnet, the testator's half sister, and the residue to Mrs Isabella Mary Burnet Craigie or Forrest, the testator's sister.

Major Craigie left moveable property amounting to about £28,500.

Mrs Craigie considering the provision made for her in her husband's settlement inadequate, claimed her legal rights, and the question arose whether in doing so she was bound to bring her pension from the Bengal Military Fund or its value as at Major Craigie's death into accounting, or whether she was entitled to her legal rights in the estate in addition to the pension.