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 advocation. Appeals in bankruptcy cases, however, had never come to the Court of Session by way of advocation, 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 advocation, 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 advocation. 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.

By the regulations attaching to the payment of the said pension from the Bengal Military Fund to Mrs Craigie, the application therefor to the India Office required the signature of Mrs Craigie only, and not of Major Craigie's trustees; and by article 42 all income derived from the fund is declared to be inalienable, and the fact of attempting the alienation of such income in any manner or under any pretence is to be deemed in itself a forfeiture of all future benefits from the fund.

For the settlement of the point a special case was presented to the Court by (1) Major Craigie's trustees, (2) Mrs Craigie, (3) the testator's two daughters and their curators, and (4) Mrs Forrest and Miss Burnet.

The question of law was—"Is the second party, on taking her legal rights in her husband's estate in place of her provisions under his settlement, bound to account to the estate for her pension from the Bengal Military Fund, or to allow the value thereof as at Major Craigie's death to be included in the estate?"

Argued for the second party—The pension from the Bengal Military Fund was equivalent to a gift from the husband to his wife during his life. Even if it was held to be a conventional provision accepted by the wife, it did not exclude her right to claim *jus relictæ*, as it was not clogged with the condition that it was not to operate as exclusive of *jus relictæ*—Fraser's Husband and Wife, 2nd ed., 1067; M'Laren's Wills and Succession, 3rd ed., 145; *Keith's Trustees* v. *Keith*, July 17, 1857, 19 D. 1040. The pension was not *in bonis* of the deceased, and therefore did not form part of the estate subject to *jus relictæ*. Collation never applied to a widow, it was only recognised among children.

Argued for the third and fourth parties—When a husband had, as in the present case, made a total settlement of his estate in his will, the widow was not entitled to make such a claim as would disturb the division unless she relinquished any provision made for her by her husband during marriage. The husband had invested a large portion of his funds in paying premiums, and in the general scheme of division of his estate in the trust settlement he took account of the pension. It was not equitable that the widow should take both her *jus relictæ* and the conventional provision. She ought either to account for the pension to the estate, or in fixing the amount of her *jus relictæ* the actuarial value of the annuity as at her husband's death should be included in the estate and deducted from her one-third thereof.

LORD JUSTICE-CLERK—I do not think that the legal question in this case presents much difficulty. The husband provided for his widow by subscribing during his lifetime to the Bengal Military Fund, whereby after his death his widow became entitled to an annuity payable to her alone. The subscriptions were paid by the husband, but the annuity was not part of his moveable estate and never could become part of it. It is settled law that a gift or provision made by a husband to a wife—so long as it is not made in a testamentary deed dealing with the *universitas* of his estate—need not be given up by the widow as a condition of claiming her legal rights. I think that rule applies to the present case, and I am accordingly in favour of answering the question in the negative.

LORD YOUNG—I find great difficulty in coming to the same conclusion as your Lordship, though I also appreciate the difficulty of coming to any conclusion in the absence of authority on the question presented for our opinion. On the one hand, it is the law that where a husband by some deed which is not testamentary has bestowed on his wife part of his estate during his lifetime, that will not interfere with the wife's right to claim her *jus relictæ* out of the rest of his estate at his death. On the other hand, if a provision is made for her by her husband in a will disposing of his whole estate, she cannot take that provision and at the same time repudiate the settlement and claim her *jus relictæ*. If an annuity of £150 had been bequeathed by the husband to his wife by his will, she could not have taken it and in addition have claimed her legal rights. I can see little or no reason for not applying the same rule to the circumstances of the present case, where the annuity payable by the Military Fund was purchased with the husband's money in his lifetime. In these circumstances, and looking to the equities of the case and to the absence of direct authority on the point, I should have been disposed to decide adversely to the widow's claim. But as I understand that the majority of the Court are in favour of the opinion expressed by your Lordship, I do not feel disposed to dissent, although I regret the result—the inequitable result as it appears to me—of that opinion.

LORD TRAYNER—I do not think that we are concerned with what may or may not be considered a reasonable family arrangement. What we have been asked to decide is a question of law. Mrs Craigie's pension was no doubt provided by means of subscriptions paid by the husband during his lifetime. But the third and fourth parties ask us to hold that this pension must be taken into account as part of the husband's moveable estate, and on that being done to ascertain the *jus relictæ*. But this pension was never at any time *in bonis* of the deceased, and therefore was not part of his moveable estate at the time of his death. That being so, it cannot be taken as part of the estate out of which *jus relictæ* is payable.

LORD MONCREIFF—I have been impressed with the equity of the claim put forward by the third and fourth parties, but I am unable to see any legal ground on which it can be based. They have furnished no authority on which their claim can be sustained. The difficulties in their path are great. A widow's *jus relictæ* comes out of the estate left by her husband at his death. Now this pension never formed

any part of the husband's estate. It is true that he created the pension by the expenditure of his means in paying premiums during his life, but it is equally true that on his death the pension formed no part of his estate. It is payable to the widow alone. I therefore think that she is entitled both to the pension and to her legal rights in the estate left by her husband.

The Court answered the question of law in the negative.

Counsel for the First Parties — Dove Wilson. Agents — Alex. Morison & Company, W.S.

Counsel for the Second Parties—H. Johnston, K.C.—Blackburn. Agents—Murray, Beith, & Murray, W.S.

Counsel for the Third and Fourth Parties —Cullen. Agents—Alex. Morison & Company, W.S.

HIGH COURT OF JUSTICIARY.

Saturday, January 30.

(Before the Lord Justice-Clerk, Lord Trayner, and Lord Moncreiff.)

MIDDLETON *v.* PATERSONS.

Justiciary Cases—Fishing—Salmon-Fishing—Weekly Close-Time—Throwing Nets out of Gear on Sunday when Impossible on Saturday—Sunday Labour—Salmon Fisheries (Scotland) Act 1862 (25 *and* 26 *Vict. cap.* 97), *sec.* 7—*Salmon Fisheries (Scotland) Act* 1868 (31 *and* 32 *Vict. cap.* 123), *sec.* 24, *and Schedule D.*

The Salmon Fisheries (Scotland) Act 1862 (25 and 26 Vict. cap. 97), sec. 7, enacts for every district that "the weekly close-time, except for rod and line, shall continue from the hour of six of the clock on Saturday night to the hour of six of the clock on Monday morning."

The Salmon Fisheries (Scotland) Act 1868 (31 and 32 Vict. cap. 123), sec. 24, enacts—"The proprietor, and when let the occupier, of every fishery at which . . . or bag-nets are used shall, in regard to such nets, do all acts required by any bye-law in force within the district in which such fishery is situated for the due observance of the weekly close-time," and Schedule D contains a bye-law with regard to the observance of the weekly close-time which requires "3. That the netting of the leader of each and every bag-net shall be entirely removed and taken out of the water.

The occupiers of a salmon-fishing were charged with an offence against this Act and Schedule, inasmuch as the netting of the leaders of their bag-nets had not been removed until between 2 and 3 o'clock on Monday morning. It was proved that their fishermen could not have removed them on the Saturday night owing to high wind and surf, but might have done so without danger on Sunday forenoon, and that although there was no suggestion of a want of *bona fides* on the part of the accused no attempt was made on the Sunday. The Sheriff-Substitute refused to convict.

Held (*diss.* Lord Moncreiff) (1) that under an ordinary contract of service no man can be compelled to work on Sunday, and consequently (2) that it being outwith the accused's power to have had removed the netting of the leaders of their bag-nets sooner than was done the Sheriff's decision acquitting the accused ought not to be disturbed.

Opinion (*per* Lord Moncreiff) that the strict statutory regulations as to observance of the weekly close-time do not admit of being modified by local custom or in deference to conscientious objection to working on Sunday.

Justiciary Cases — Statute — Desuetude — Sunday Labour—Act 1579, *cap.* 70.

Question—Whether the Act 1579, c. 70 (prohibiting Sunday labour) is in desuetude.

George Paterson senior, residing at Cromarty, George Paterson junior, residing at Portmahomack, and John Paterson, resid- at Hilton, all tacksmen of salmon-fishings and the individual partners of the firm of George Paterson & Sons, tacksmen of salmon-fishings, Cromarty, were charged in the Sheriff Court of Ross and Cromarty at Tain on a summary complaint at the instance of Walter Ross Taylor Middleton, Clerk to the Conon District Fishery Board.

The complaint set forth that they, "occupiers of the Tarbatness salmon fishery, in the parish of Tarbat and county of Ross and Cromarty, being a fishery at which bag-nets are used, have contravened the Salmon Fisheries (Scotland) Act 1868, sec. 24, and the bye-law Schedule D, sec. 3 annexed to the said Act, in so far as between six o'clock p.m. on Saturday the 23rd day of May 1903 and six o'clock a.m. on Monday the 25th day of May 1903, and within or during the weekly close-time for the district of the river Conon under the Salmon Fishery Statutes, the said George Paterson senior, George Paterson junior, and John Paterson did omit or fail entirely to remove and take out of the water the netting of the leaders of five bag-nets belonging to them on said fishery, all placed in the sea at a part thereof opposite or near the farm of Wilkhaven, occupied by Donald Macdonald, situated in the parish of Tarbat and county of Ross and Cromarty, and within the said district of the river Conon, whereby the said George Paterson senior, George Paterson junior, and John Paterson are liable (1) to forfeit the said nets, and (2) to pay in respect of each net a sum not exceeding £10, and a further sum not exceeding £2 for every salmon taken or killed by means of said nets during the said weekly close-time."

The cause was tried on the 29th July 1903, and the accused pleaded not guilty and