his—that he did not take any time to think. What then is left? The respondent's case is founded entirely on what happened during the first month of the bill's currency. There were three meetings, and there never was anything more than casual references to the bill. I am clearly of opinion that when the object is to make a party responsible for what he did not sign, if there is no writing to show it, the evidence must be very distinct, and I am not sure that it would be effectual, however distinct, unless actings followed which showed prejudice. Mere evidence of agreement would not bind one under a lease without proof of actings. Verbal communings will bind only if acted on. In *Mackenzie's* case the House of Lords, especially Lord Blackburn, say that the essence of the case on this head is that actings should follow on conversations to make it effectual. In this his Lordship follows Baron Parke in *Freeman* v. *Cook* (2 Ex. 654). I make these observations merely to guard myself from being understood to say that words alone would have been enough, however clear. Here I think the evidence is far from clear. I entirely agree with your Lordship's view of the evidence. There is an entire failure to prove adoption.

The Court adhered.

Counsel for Reclaimer—Scott—Rhind. Agent—W. Officer, S.S.C.

Counsel for Respondent—D.-F. Kinnear, Q.C. H. Johnston. Agents—Leburn & Henderson, S.S.C.

Saturday, June 4.

FIRST DIVISION.

[Sheriff of Lanarkshire.

MARR & SONS *v.* LINDSAY.

Process—Appeal — Bankruptcy — Where Sheriff Refuses Sequestration—Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. cap.* 79), *secs.* 19, 31, 169, 170.

It is competent to appeal to the Court of Session against a deliverance of the Sheriff refusing a petition for sequestration.

On the 2d April 1881 John S. Marr & Sons, stationers, Glasgow, presented a petition in the Sheriff Court of Lanarkshire for the sequestration of the estates of Robert Lindsay, bookseller, Glasgow. The Sheriff-Substitute (SPENS) pronounced the first deliverance on the same day. On the 30th April, after some discussion, the Sheriff-Substitute dismissed the petition and found the petitioners liable in expenses, modified to the sum of £5. The petitioners appealed. The respondent, when the case appeared in the Single Bills, objected to the competency of the appeal, on the ground that the Bankruptcy Act of 1856 by implication excluded a right of appeal against deliverances of the Sheriff refusing sequestration. The arguments of parties, and the portions of the statute founded on, fully appear from the opinion of the Lord President, who said:—

In this case the appellants, Marr & Sons, on the 2d April presented a petition in the Sheriff Court praying for the sequestration of the estates of Robert Lindsay, the respondent. There was a good deal of discussion in the Sheriff Court, extending over several days, and on the 30th April the Sheriff-Substitute dismissed the petition for sequestration, and found the petitioner liable in expenses, which he modified to £5. The petitioner now appeals, and the respondent objects that the appeal is incompetent and that the Sheriff's decision is final.

Now, that depends on whether it is made final by the operation of the Bankrupt Statute, and it is necessary to attend to several sections of the statute in order to dispose of this point, which is certainly one of considerable importance. The matter of appeals generally is regulated by the 169th and the 170th sections of the Act. The 169th section provides for appeals against resolutions of the creditors, and for appeals against deliverances of the trustee in the sequestration; and the 170th section provides for appeals from the Sheriff to the Court, but it applies only to appeals after the deliverance of the Sheriff awarding sequestration, and consequently does not embrace the appeal in the present case. There is therefore no direct authority in the statute sanctioning this appeal, but on the other hand there are no direct words taking away the right of appeal.

The 31st section provides that the deliverance awarding sequestration shall not be subject to appeal, and the remedy there given is a petition for recall. "The deliverance awarding sequestration shall not be subject to review; but any debtor whose estate has been sequestrated without his consent, or the successors of any deceased debtor whose estate has been sequestrated without their consent, unless on the application of a mandatory authorised by the deceased debtor, or any creditor, whether the sequestration has been awarded by the Lord Ordinary or by the Sheriff, may, within forty days after the date of such deliverance, present a petition to the Lord Ordinary setting forth the grounds for recall, and praying for recall." Now, this section does not apply to the present deliverance, but it applies to a deliverance which might have been made in this case, namely, a deliverance awarding sequestration; and the only section of the statute relating to the case of refusal to sequestrate is the 19th, in which it is provided that where sequestration has been awarded against a debtor by the Sheriffs of two or more counties, the later sequestration or sequestrations shall, on the production of a certificate by the Sheriff-Clerk of the county in which sequestration first in date was awarded, setting forth the date of such sequestration, be remitted to the Sheriff of such county; and where all the sequestrations are of the same date, any one may be brought by appeal at any time before either Division of the Court of Session or Lord Ordinary; and on such appeal, or when a sequestration has been awarded by the Court alone, or by the Court of Session, and also by one or more Sheriff Courts, the Court of Session or Lord Ordinary shall remit the sequestration to such Sheriff Court as in the whole circumstances they or he shall deem expedient; and a notice of such remit shall be inserted in the *Gazette* within

four days after such remit shall have been made: Provided always, that in any case in which the Sheriff has refused to sequestrate, it shall be competent to present a petition for sequestration notwithstanding such judgment of refusal. Now, it is contended by the respondent that there is here implied a provision that the judgment of the Sheriff refusing sequestration shall be final, and not subject to appeal. The section certainly does not enact that expressly, and the general rule is that the right of appeal from an Inferior to the Superior Court cannot be taken away except by express words. This is a rule which is no doubt subject to some qualification, because if the jurisdiction conferred on the inferior Judge is in a subject specially given to him, and in which the Superior Court has not previously had jurisdiction, it may be much more easily implied from words which naturally lead to the inference that the jurisdiction of the Inferior Court was not only privative, but also final and not subject to review. But this consideration cannot apply to the present case, because the whole matter of bankruptcy and sequestration was within the jurisdiction of this Court exclusively until the Act of 1856 gave the Sheriff the power of awarding sequestration. The rule, therefore, seems to me directly to apply to the present case, and consequently I am of opinion that the right of appeal is not excluded by section 19, and that this appeal is competent.

But further, to hold otherwise would, I think, be not only inconvenient but mischievous. The Sheriff here not only refuses the remedy which the petitioner asks for, but finds him liable in expenses. It is no redress against that to allow him to come into this Court with a fresh petition, for he could not recover these expenses by such a process. But what is more important—the creditors of the bankrupt generally would be deprived of the effect of the first deliverance of the Sheriff, and this difficulty also could not be got rid of by another application in this Court. The present case is a very good example of this. The first deliverance was pronounced on the 1st April, but the Sheriff did not refuse the petition until the 30th of the same month. A long time would therefore have necessarily elapsed before a new petition could have been presented and a new first deliverance pronounced. And during this period there would be room for many preferences being established which would have been excluded by the first deliverance of the Sheriff.

Some difficulties were raised as to the form of appeal, the time and conditions of presenting it, and as to whether it should be in the Bill Chamber or before the Court. Now, as to all such difficulties I make one answer. If the right of appeal is not taken away by the statute, and if there is no express provision regulating the manner of appeal, the party cannot be deprived of the right to appeal by any such technicalities. They must be got the better of somehow. But no difficulties of this kind can be allowed to interfere with the petitioner's constitutional right to appeal, unless that right has been taken away by statute.

Lord Deas, Lord Mure, and Lord Shand concurred.

The Lords repelled the objection to the competency, and sent the case to the roll.

Counsel for Appellants — Asher — Jameson. Agents—Dove & Lockhart, S.S.C.

Counsel for Respondent — Guthrie Smith — M'Kechnie. Agent—John Gill, S.S.C.

Tuesday, June 7.

FIRST DIVISION.

[Lord Adam, Ordinary.

BEATTIE (INSPECTOR OF POOR, BARONY PARISH) *v.* GROZIER (INSPECTOR OF POOR, CATHCART PARISH).

Poor—Relief—Lunatic—Able-Bodied Father—Lunacy Acts 20 *&* 21 *Vict. c.* 71, *secs.* 75, 76, *and* 77, *and* 25 *&* 26 *Vict. c.* 54, *secs.* 14 *and* 15.

A man in receipt of an income of £120 a-year, with nine children, two of whom were at service, one earning £52 per annum and another £13 per annum, applied to the parish in which he resided for relief on behalf of his lunatic son, who was subsequently, on the petition of the inspector of poor of the parish, removed to a lunatic asylum. *Held* that in the circumstances the parish was not liable, and that having make certain expenditure on account of the lunatic, it was not entitled to reimbursement from the lunatic's parish of settlement.

This was an action raised at the instance of the Inspector of Poor of the Barony Parish of Glasgow against the Inspector of Poor of the Parish of Cathcart, in which the pursuer sought reimbursement from the defender of certain expenditure incurred on account of a lunatic named David Hunter Oliphant, whose settlement was in Cathcart Parish. The lunatic was born in 1858; he was a congenital idiot, and had been an inmate of Larbert Institution for Imbeciles from November 1870 to January 1878. At the latter date he was discharged from Larbert Institution on account of his age, his father, who had agreed to pay for his maintenance there £25 a-year, being then in arrear to the extent of £39, 16s. Those arrears were not recovered. On 18th February 1878 the father, who at that time resided in the Barony Parish, made application to the inspector of that parish for relief on behalf of the lunatic, and on the following day the inspector, having made inquiry regarding the circumstances of the lunatic's father, presented a petition to the Sheriff under the 14th section of the Lunacy Act (25 and 26 Vict. c. 54) for authority to remove the lunatic to the Barony Parish Asylum, to which he was admitted on the same day. The medical certificates appended to the petition bore that the lunatic was a proper person to be detained under care and treatment. From the assistant inspector's report, appended to the schedule of application for relief, it appeared that the lunatic's father was a clerk with the Scottish Guardian Society at £120 per annum, and resided in a house of three rooms and kitchen, rented at £27 per annum; that exclusive of the lunatic he had eight of a family, viz., "Mary, 24, at service; Jemima, 22, at service; Robert, 21, clerk at 20s. weekly; Jane, 19, at home, states does nothing; Elizth.,