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.,

17, at home, states does nothing; William, 14, message boy; John, 11, at school; Hugh, 8, at school." The defender stated his willingness to pay £10 per annum towards the lunatic's support; but the committee of relief of the Barony Parish appointed him to pay 5s. per week. On 23d March 1878 statutory notice of chargeability was given to Cathcart, which repudiated liability on the ground that the lunatic's father was quite able to support him, and that he was in no respect an object of parochial relief.

For Barony Parish it was pleaded—"(1) The pauper having been, at the date when he became chargeable to the Barony Parish, and still being, a proper object of parochial relief, the pursuer is entitled to be relieved by the parish of the pauper's settlement of all advances made or to be made on behalf of the pauper. (3) The parish of Cathcart being the parish of David Hunter Oliphant's settlement, the pursuer is entitled to decree against the defender, in respect of the provisions of the Lunacy Acts, and particularly sections 75, 76, and 77 of the Lunacy Act 20 and 21 Vict. cap. 71. (4) *Esto* the pauper's father is able to provide for his maintenance, it lies with the parish of Cathcart, as the pauper's parish of settlement, to enforce his liability."

For Cathcart Parish it was pleaded—"(3) The alleged pauper not being a proper object of parochial relief, the defender should be assoilzied. (4) The alleged pauper not having been in a condition dangerous or offensive to public decency, the pursuer was not entitled to interfere with him, or to transmit him to an asylum at the cost of the defender's parish. (5) If the alleged pauper was in the condition before mentioned, the pursuer could only proceed under section 15 of the Lunacy Act, and not having done so, he is not entitled to make the expenses incurred by him, or the costs of the pauper, a charge against the defender's parish."

A proof was led, the principal facts in which sufficiently appear from the Lord Ordinary's note. The pursuer was examined, and deponed that he considered the lunatic dangerous. The father deponed that the lunatic could not be managed at home, because he was very stubborn and quarrelsome, and that if spoken to or in any way annoyed he would lift the first object he could lay hands on and throw it at his assailants.

The Lord Ordinary assoilzied the defender, and subjoined to his interlocutor the following note:—"There does not seem to be any difficulty in this case as to the parish of settlement of the alleged pauper lunatic David Hunter Oliphant.

"It is not disputed that the parish of settlement of his father Robert Oliphant is the defenfender's parish of Cathcart.

"David Hunter Oliphant has been an imbecile from his birth. He was born in February 1858. In November 1870, when between 12 and 13 years of age, he was sent to the Larbert Institution for the Training of Imbeciles, and remained there until January 1878, when he returned to his father's house. After remaining about a month there, he was removed on the 19th of February 1878, when he was 20 years of age, to the pursuer's lunatic asylum at Woodilee. He is, and always has been, incapable of earning a livelihood for himself. In these circumstances it appears to the Lord Ordinary to be clear that his settlement is that of his father, viz., the parish of Cathcart—*Fraser* v. *Robertson*, June 4, 1867, 5 Macph. 819; *Lawson* v. *Gunn*, Nov. 21, 1876, 4 R. 151; *Anderson* v. *Wilson*, June 12, 1878, 5 R. 904.

"The real question at issue between the parties appears to the Lord Ordinary to be, Whether the pursuer, the inspector of the Barony Parish, being the parish in which the lunatic was found, was entitled to treat him as a pauper lunatic, to the effect of placing and maintaining him in the asylum with the right of reimbursement from the parish of his settlement?

"The facts are, that when David Hunter Oliphant was removed to the asylum his father was in receipt of a salary, as a clerk in an accountant's (Mr Rutherfurd) office, of £120 per annum. He had a wife and eight other children. Of these the two eldest were daughters, and were in service, and presumably supporting themselves. The eldest son Robert, who was 21, had a salary of £50 per annum, which he gave to his mother for the expenses of the establishment. The two next were daughters, 19 and 17 respectively, who were at home, but were of an age to do something for themselves. The next was a boy of 14, who was earning 6s. a-week as a message boy. The two youngest, 11 and 8 respectively, were boys at school.

"Robert Oliphant, the father, has now left Mr Rutherfurd's employment and set up in business for himself; but he admits that he is no worse off now than he was in 1878.

"In this state of matters the Lord Ordinary is of opinion that the pursuer was not called upon to interfere in this case. It is not a little startling that the child of a man in receipt of £120 a-year should be treated as a pauper lunatic, and the expense of his maintenance in a large measure thrown upon the public. It is a heavy affliction in a family to have an imbecile child among its members. The burden of having to support him in an asylum out of limited means is no doubt a heavy one, but it appears to the Lord Ordinary that it is a burden which a person in Oliphant's circumstances cannot and ought not to throw upon the public.

"Had this been a case where the lunatic was dangerous to the lieges, and it had been necessary to take proceedings under the 15th section of 25 and 26 Vict. cap. 54, the pursuer would have had relief against the parish of settlement; but there is no case of that kind. The proceedings were taken under the 14th section of the Act.

"The pursuer further maintains that, even if the lunatic's father be able to provide for his maintenance, it lies with the parish of Cathcart, as the lunatic's parish of settlement, to enforce his liability—*Dinwoodie* v. *Graham*, Jannary 27, 1870, 8 Macph. 436. But this is quite a different case from that of *Dinwoodie*. If in this case the lunatic's father was able to provide for his maintenance, he was not a proper object of parochial relief, and ought not to have been so treated. The pursuer had all the facts before him at the time when he removed the lunatic to the asylum, which ought to have led him to that conclusion, and the defender is not bound to relieve him of a burden which he ought never to have incurred."

The pursuer reclaimed, and argued—The evidence, taken along with the medical certificates, clearly showed that the lunatic, although not outrageous, was in a condition in which he might at any moment become a source of danger to the lieges, and consequently that his removal to an asylum was imperatively necessary. In these circumstances the pursuer was justified in interfering; and having regard to section 59 of the Poor Law Act (8 and 9 Vict. c. 83), section 112 of the Lunacy Act (20 and 21 Vict. c. 71), and 15 of the Lunacy Act (25 and 26 Vict c. 54), he was bound to attend to the case. The objection taken by the defender that proceedings had not been adopted under section 15 of the Act 25 and and 26 Vict. c. 54, was groundless, inasmuch as the defender was in no way prejudiced thereby. It was equally open to the pursuer to take action under section 14 of that statute, and that course was invariably adopted in practice to save expense. The father's circumstances were not such as to warrant his being made liable for the entire support of his son in an asylum, the law having always recognised lunacy as affording an exceptional ground entitling to parochial relief, even in cases where otherwise it would not have been legally claimable. But in any event, if there were any doubt as to the father's ability to maintain his child in an asylum, it fell to the parish of settlement and not to the relieving parish, whose duty was simply interim and temporary, to solve the doubt and enforce the father's liability.

Argued for the defender — The evidence clearly established that the lunatic was not in a state threatening danger to the lieges at the date of his removal to asylum; he was living in his father's house; his father's circumstances showed that he was quite able to maintain the lunatic even in an asylum, if his removal thereto was necessary, which was denied. The lunatic was not found wandering about and destitute, and therefore the pursuer was not called upon to interfere at all; having interfered he must bear the consequences.

Authorities referred to, in addition to those mentioned in the Lord Ordinary's note—*M'Corrie* v. *Cowan*, 24 D. 723, and *Palmer* v. *Russell*, 10 Macph. 185.

At advising—

Lord President—I have no doubt that in the administration of the Lunacy Acts parochial boards and inspectors of poor have a very important and often a somewhat delicate duty to discharge, and I should be sorry if any judgment of ours should have the effect of interfering unnecessarily with the mode of performing that duty or of discouraging boards or inspectors from taking up cases which properly fall under their administration. I am therefore unwilling to suppose that the proceedings here of the inspector under section 14 are unauthorised by the statute. We are told that in practice inspectors present such applications under that section, and I have no intention of expressing an opinion adverse to that practice. But I think that, primarily at least, section 14 was intended to apply to proceedings by the parents or guardians or friends of the person whom it is desired for their benefit to send to an asylum, and if an inspector proceeds under that section, as I believe he may legally do, I think he must take care that he does not merely step into the shoes of such parents or guardians and save them, at the expense of the parish, from the outlay which they would otherwise have incurred.

The defence to the present action is that the subject of inquiry here was not a pauper—not a proper object of parochial relief under the combined operation of the Poor Law and Lunacy Acts—and if that defence is made out on the facts, I think there can be no doubt that the judgment of the Lord Ordinary is sound. If a parochial inspector takes up a case where the lunatic is not a proper object of relief, he cannot expect to obtain relief from the parish of settlement. Now, how does the matter stand upon the facts? I think it has been pretty well established that there was coming into this man's house at the time these proceedings began an income of £185 per annum. It is said he was in some difficulties, and had incurred a debt to another lunatic establishment where his son had been, and was not able to pay his arrears, but that does not interfere with the fact that he had an existing income, arising from himself and his two sons, amounting to £185; and the question to my mind is, whether this man can be said to be such a person as should be relieved of the maintainance of his lunatic son at the expense of the rates—at the joint expense, that is, of all the ratepayers of the parish, rich and poor, for the poor as well as the rich pay rates—men perhaps with incomes infinitely less than £185? I think the ratepayers are entitled to be protected from such a burden, and that this man can afford to pay for his son's maintenance. No doubt it will require a sacrifice on his part and be a serious burden on his resources, but I cannot doubt that he is quite able to pay the £40. It will reduce his income considerably, and interfere with the comforts of his house and of his wife and children; they must, in short, just live on less than their income to the extent required for the lad's maintenance; but that is just one of the misfortunes of a person in that position in life having a child who is a lunatic. But since the father himself is not a pauper, the leading rule of poor law must apply, that he must bear his own burden; and the lunacy law steps in and says, "You must not keep your wife or your son in family with you, but send him or her to an asylum, and if it is clearly established that you cannot possibly afford to pay for the maintenance there, it is only so that that maintenance will be chargeable under the Act upon the parish." Now, that does not appear to be the case here; the extra expense will be a sacrifice to the father, but no impossibility.

I agree entirely with the judgment of the Lord Ordinary.

Lords Deas, Mure, and Shand concurred.

The Lords adhered.

Counsel for Pursuer (Reclaimer)—Burnet—Ure. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Defender (Respondent)—Solicitor-General (Balfour, Q.C.)—Scott. Agents—J. & J. Galletly, S.S.C.