accident took place "on or in or about the railway." A railway is defined by section 3 of the Regulation of Railways Act 1873 (36 and 37 Vict. c. 48) as including "every station, siding, wharf, or dock of or belonging to such railway, and used for the purposes of public traffic," and this definition is adopted in the Workmen's Compensation Act. Now, it seems to me beyond doubt that these horses were used for the purposes of public traffic. We are told that they are used for drawing the company's lorries and carts, or in drawing railway trucks, and I do not think it can be denied that while so employed they are used in facilitating the public traffic. Then if we come to the stables, it is impossible to say that they are not part of the station, and the same thing may be said of the smithy. Mr Dundas seemed to say that the stables and smithy were not places used for public traffic because the public had not access to them. But I do not think that is the proper test. The test is whether they were used for facilitating public traffic, not whether the public had access to them.

I have nothing to say, one way or another, about the English case of *Milner*, except that the present case does not raise the same question. I quite understand that it might be held that a refreshment room was not a part of the railway used for the purposes of public traffic, but I do not think that bears on the present question. I therefore agree with your Lordship that the question should be answered in the affirmative.

LORD M'LAREN—The interpretation of the Workmen's Compensation Act has been made more difficult by the system which has been adopted of referring to other Acts of Parliament for the definition of the terms used instead of framing a definition clause adapted to the circumstances contemplated by the Act itself. We have had several questions before us in determining what is a "factory," and we have had to consider them with reference to the scope of the Factory Acts, which deal with entirely different subjects. So here we have to consider the question what is a "railway" with reference to a definition drawn from the Regulation of Railways Act 1873—an Act which did not deal with the subject of the railway system as a whole, but with those parts of it which were deemed suitable for the jurisdiction of the Railway Commissioners. But as it happens, this definition when fairly read, answers the purpose in nine cases out of ten. There may be difficult cases, but I do not think this is one of them. If we take the case of an accident occurring in connection with a train which is used solely for the purpose of carrying locomotive coal or rails, or material for the permanent way, this is a case which cannot be said to be connected with public traffic, and yet we can hardly suppose that it would be dealt with on different principles from an accident occurring to a goods or passenger train. In the present case the horses kept at the terminus were, on a fair and reasonable construction of the words, kept for the purposes of public traffic, and the stables, forge, and stores necessary for keeping the establishment of horses in working order fall within the same category as the horses themselves. I think therefore that this was an accident to which the Workmen's Compensation Act applies.

LORD KINNEAR concurred.

The Court answered the question in the affirmative.

Counsel for the Appellants — Dundas, Q.C. — King. Agents — Hope, Todd, & Kirk, W.S.

Counsel for the Respondent — Munro. Agents—Sibbald & Mackenzie, W.S.

Wednesday, July 11.

FIRST DIVISION.

[Sheriff-Substitute of Roxburgh, &c.

PURVES *v.* GROAT.

Bankruptcy — Sequestration — Procedure — Review — Appeal — Competency—Deliverance of Sheriff Prior to Award of Sequestration—Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. cap.* 79), *secs.* 16 *and* 170.

Held that it was competent to appeal against a deliverance of a Sheriff in a petition for sequestration, pronounced before sequestration had been awarded, allowing a proof of an alleged verbal agreement between the petitioner and the debtor to the effect that the bond, upon which the petitioner founded as his document of debt, was not to be called up for a period of five years.

Opinions (*per* Lord Adam and Lord Kinnear) that while there was nothing in the Bankruptcy Act 1856 to exclude appeals from a deliverance of the Sheriff prior to an award of sequestration, there might be cases in which the Court ought not to entertain such an appeal.

Alexander Purves, residing at Hawick, presented a petition in the Sheriff Court of Roxburgh, Berwick, and Selkirk, at Hawick, for the sequestration of the estates of Donald Groat, spirit merchant, Burgh Arms, Hawick.

In support of his petition, Purves stated that he was a creditor of Groat to the extent of £1003, 10s. 9d., under a bond of corroboration in his favour, and that Groat had been rendered notour bankrupt within the last four months, and still remained in a state of notour bankruptcy.

Groat lodged answers, in which he stated that by a verbal agreement Purves had arranged not to call up the bond for five years.

On 27th June 1900 the Sheriff-Substitute (BAILLIE) pronounced the following inter-

locutor:—"Having heard agents for the parties, Repels the objections made for the debtor other than the objection that an alleged verbal agreement had been entered into between the parties not to call up the bond of corroboration for a period of five years, and allows before answer a proof to the debtor of said alleged verbal agreement, and to the petitioning creditor a conjunct probation."

Note.—"The debtor objected that the petitioning creditor's oath was not conform to the statutes, in respect it did not specify that the latter held certain subjects belonging to him as heritable creditor under the bond of corroboration produced by him. I think, however, that the reference to this bond is sufficient compliance with the statute. He further objected that he was not insolvent; but as he did not produce evidence that the debt has now been paid, I think, in view of the expiry of the days of charge on the bond without payment, that he cannot be allowed proof of this. A further objection was that a verbal agreement had been entered into between the parties under which the bond was not to be called up for a period of five years. The petitioning creditor admitted that a verbal agreement had been entered into reducing the interest from 5 to 4 per cent., and I think, in view of this alteration of the written agreement, that the debtor is entitled to proof of this alleged further alteration of it."

The pursuer appealed to the First Division of the Court of Session.

Counsel for the respondent objected to the competency of the appeal.

The Bankruptcy (Scotland) Act 1856 contains the following provision relative to appeals—(Section 170) "It shall be competent to bring under the review of the Inner House of the Court of Session . . . any deliverance of the Sheriff, after the sequestration has been awarded (except when 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 appeal was incompetent, because the terms of section 170 (quoted *supra*) allowing appeals after an award of sequestration implicitly prohibited appeals before it. Besides, the general rule was that an interlocutory judgment of a Sheriff could not be appealed, and there was nothing in the Bankruptcy Act to abrogate that rule. The cases in which appeal had been allowed were not authorities to the contrary. One class—*Tennant* v. *Crawford*, Jan. 12, 1878, 5 R. 433; *Wylie* v. *Kyd*, May 21, 1884, 11 R. 820; *Moncur* v. *Macdonald*, Jan. 8, 1887, 14 R. 305, were appeals after sequestration had been awarded. *Marr & Sons* v. *Lindsay*, June 7, 1881, 8 R. 784, was an appeal from a final judgment refusing sequestration. In *Hope* v. *Macdougall*, Nov. 7, 1893, 21 R. 49, the ground of judgment was that the Sheriff's interlocutor was incompetent and *ultra vires*, which always entitled the Supreme Court to intervene. If an appeal were competent before an award of sequestration, the provision in section 16 of the Act, whereby an appeal is allowed from a deliverance appointing a judicial factor would be entirely unnecessary and superfluous.

Argued for the appellant—The appeal was competent. Though not expressly authorised by the Bankruptcy Act, it was not negatived. If there was no appeal, a proof might be taken in a case like this, although the allowance of proof of a verbal agreement was directly in the teeth of the provisions of the Act. Meanwhile the estate might be dissipated, or preferences might be secured. The cases of *Marr* v. *Lindsay* (*ut supra*), *Hope* v. *Macdougall* (*ut supra*), and *Cuthbertson* v. *Gibson*, May 31, 1887, 14 R. 736, were authorities for the competency of an appeal before an award of sequestration. The Court of Session had a general and inherent power to review all administrative acts of a Sheriff.

LORD PRESIDENT—In considering the competency of this appeal it is material to keep in view the nature of the proceeding in which it is taken. Bankruptcy procedure is mainly administrative. It is a combination of different diligences for distributing the estate of the bankrupt in accordance with the rights and preferences of the creditors. That being the nature of the procedure it is plainly within the power of the Supreme Court to redress errors and control irregularities unless the Court is deprived of that power by statute. The question therefore comes to be: Is there anything in the Act of 1856 to deprive the Court of this power of supervision and control? It appears to me that there is nothing in the Act which has this effect, and this view received, in the case of *Marr & Sons*, the sanction of the very high authority of Lord President Inglis.

The enactment relied on by the respondent as excluding review in this case is section 170 of the Act of 1856, but in the case of *Marr & Son* the Lord President expressed the view that that section, while giving no direct statutory authority for appeals prior to sequestration, did not expressly take away any such right of appeal. The policy of the statutory provision is thoroughly intelligible, because it is not desirable that the procedure prior to sequestration should be lightly interfered with by interlocutory appeals. But the section contains no prohibitive or negative words. It declares affirmatively that it shall be competent to bring under review any deliverance of the Sheriff after the sequestration has been awarded; but it does not say there shall be no appeal prior to the award of sequestration, and there is no general provision in the statute dealing with that case. The only provision relative to appeals antecedent to sequestration is in section 16, with reference to an order of the Sheriff for the interim preservation of the estate by the appointment of a judicial factor or other proceedings. It is declared by the section that such interim appoint-

ment or proceedings "shall be carried into immediate effect," but may be recalled by the Court of Session on appeal. This special right of appeal was apparently given to guard against the inference which might otherwise have been drawn from the declaration that the interim proceedings were to have *immediate* effect that such proceedings were to be final. Any such question is avoided by the express provision that an appeal shall lie against the order of the Sheriff. The section thus rather strengthens than weakens the presumption that in the general case the power of this Court to control bankruptcy proceedings is not taken away.

The present case shows how undesirable it would be that the rule should be otherwise. It would be extraordinary if no remedy existed against an interlocutor such as this allowing a proof of an averment of verbal agreement controlling or partially discharging the obligation imposed by a bond or bill. What is averred is really a *pactum de non petendo*, and such an allegation might be made (whether truly or not) in every case where a petitioning creditor founds upon a liquid document of debt.

To delay the award of sequestration till a proof is taken and a judgment pronounced upon an averment of that kind would give rise to all the evils which an early award of sequestration is intended to avoid.

I accordingly think that the objection to the competency of this appeal should be repelled.

LORD ADAM—Section 170 of the Bankruptcy Act 1856 deals with interlocutors pronounced after sequestration has been awarded, and points out the manner in which all such interlocutors, except where they are declared not to be subject to review, may be appealed. That section does not apply to the present case, because here sequestration has not been awarded. And I understand that there is no clause in the Bankruptcy Act dealing with the review of interlocutors prior to an award of sequestration except section 16, which deals with the appointment of a judicial factor. That is the position as to appeals on the statute. Now, in the case of *Marr & Sons* v. *Lindsay*, 8 R. 784, it was held that section 170, which deals only with appeals from interlocutors after sequestration, did not implicitly provide that there should be no appeal from an interlocutor before sequestration. I think that is the result of the decision in the case of *Marr*, and other decisions have followed on the same section. If that is so, an appeal from an interlocutor refusing sequestration is competent. There may be cases in which a Sheriff, acting in an administrative capacity, may have deviated from the plain rules laid down for him in sequestration procedure, and an appeal to the Court from such an interlocutor would be competent. It does not follow that it is always competent to appeal every interlocutor pronounced before sequestration. For example, if the rules of procedure were exactly followed by the Sheriff, and sequestration refused, and yet an appeal was brought, we might say that such an appeal was incompetent. But in this case I am of opinion that this interlocutor is subject to review, and I therefore agree with your Lordship.

LORD M'LAREN—I think the consideration of this question should be approached from the point of view that this Court has a universal jurisdiction for the correction of all irregularities in the procedure of inferior courts or magistrates, whereby the property or persons of the lieges may be affected. This necessary jurisdiction is especially applicable to the case in which the property or persons of the lieges are affected by irregularities in the execution of diligence. In the case of an ordinary action the right of appeal is subject to many limitations under the operation of successive Acts of Parliament. In bankruptcy proceedings the right of appeal after sequestration is regulated by section 170 of the Bankruptcy Act. Nothing is said as to appeal before sequestration except in the section (16) dealing with the interim preservation of the property of the bankrupt by means of the appointment of a judicial factor. If the Sheriff or the Lord Ordinary follow the procedure expressed by statute, it can almost never happen that any interlocutor will be necessary before the awarding or refusal of sequestration, except, of course, the order of service, and, it may be, an order for interim preservation of the estate. It is said that questions of jurisdiction or domicile might be raised, but for my part, if I were dealing with such questions, I think I should be disposed to come to the best conclusion I could on the information before me, leaving the question of domicile to be tried in an application for recal of the sequestration. But we must contemplate the case of the Inferior Court not proceeding strictly on the lines laid down in the statute. For instance, as I suggested in the course of the debate, a sist of the proceedings might be granted, perhaps on the representation that some other proceeding was depending, and the result might be, if there were no appeal, to deprive the creditors of their rights, and to afford an opportunity for the dissipation of the estate. I agree with the opinion of Lord President Inglis, who, as has already been said, was familiar with the administration of the Bankruptcy Act from its beginning, and was the judge who chiefly formed the code of decisions on which our modern bankruptcy law has been built up, that the statute contains no exclusion of the right of appeal from interlocutors pronounced prior to an award of sequestration. It follows, in my opinion, that the present appeal must be sustained.

LORD KINNEAR—I quite agree. I think that if the right of appeal had depended exclusively on section 170 of the Bankruptcy Act of 1856, I should have been disposed to hold that this appeal was excluded, because the express enactment that

appeals after the award of sequestration should be competent might have been fairly read as an exclusion of appeals before the award. But then it has been decided in the case of *Marr & Sons* v. *Lindsay*, 8 R. 784, that that is not the true or the only ground of appeal, and that the real ground is that since this Court had jurisdiction in bankruptcy matters antecedent to the statute, its general jurisdiction to review the judgments of the inferior courts cannot be taken away by implication, but remains untouched, unless it is excluded by the express words of the statute. On the authority of the decision I have referred to, I take it that since there are no such express words in the Bankruptcy Act, the mere fact that appeals after sequestration are authorised cannot exclude appeals before sequestration.

I agree with Lord Adam that it does not follow that we ought to entertain appeals from interlocutors prior to sequestration in all cases. There may be many interlocutors in the course of procedure in which an appeal would be quite unnecessary and probably incompetent. But the objection here is that the Sheriff has gone entirely outside the proper course of procedure, and pronounced an interlocutor which is incompetent and contrary to the policy of the Act. Whether that objection is well founded or not I do not say—that is a question on the merits. But I am clearly of opinion with your Lordship that it is an objection which we are entitled and bound to listen to.

Counsel for the respondent admitted that he could not support the interlocutor of the Sheriff-Substitute.

The Court recalled the interlocutor of the Sheriff-Substitute, and remitted to him to award sequestration.

Counsel for the Appellant—M'Lennan—W. Thomson. Agents—Steedman & Ramage, W.S.

Counsel for the Respondent — Cook. Agents—Turnbull & Herdman, W.S.

Saturday, June 2.

SECOND DIVISION.

[Sheriff-Substitute of Lanarkshire.

DAWSON BROTHERS *v.* JAMES FISHER & SONS.

Agent and Principal—Commission—Shipbroker—Charter-Party—Renewal or Independent Charter—Second Contract not in Contemplation of Parties when First Made—Shipping Law.

By charter-party negotiated on behalf of the owners by a firm of shipbrokers, it was stipulated that the vessel should be hired for six months at £330 per month, with options to the charterers (1) to cancel the charter on the expiration of the first month, and (2) to continue it for a further period of six months, and that commission of two-thirds of 5 per cent. on the estimated amount of freight should be payable to the shipbrokers. About six weeks before the expiration of the first six months the charterers intimated to the owners direct that they would not continue the vessel at the same rate of hire, and ultimately after negotiations between the charterers and the owners, acting without the intervention of the shipbrokers, a new charter-party was executed. This charter-party was substantially the same as the first, with the exception (1) that the rate of hire for the first six months was £220 per month with an option to the charterers of continuing the charter for another six months at £225 per month; (2) that there was no option to cancel at the end of the first month; and (3) that there was no brokerage clause. *Held* that the second charter party was not a renewal or continuation of the first, but was a separate and independent contract, and that it was not a contract which was within the contemplation of parties when the first contract was entered into, and that consequently the shipbrokers were not entitled to charge any commission in respect of it.

This was an action brought in the Sheriff Court at Glasgow by Dawson Brothers, steamship owners and brokers, Glasgow, against James Fisher & Sons, steamship owners, Barrow-on-Furness, in which the pursuers craved decree for payment of £66, being the amount of commission or brokerage alleged by them to be due by the defenders in connection with the chartering of a steamer called the "Firth Fisher," belonging to the defenders.

Proof was allowed and led.

The following narrative of the facts is in substance taken from the note to the interlocutor of the Sheriff-Substitute (STRACHAN):—In the months of September and October 1898 the pursuers were in negotiations with the defenders and Messrs Harold Nickson & Company of Manchester with the view of arranging a charter between them of the "Firth Fisher." These negotiations resulted in a charter-party being entered into between them, dated 8th October 1898.

By this charter-party Messrs Harold Nickson & Company agreed to hire the said steamer for a period of six months to trade between ports in the United Kingdom and between Hamburg and Brest on the Continent, excluding the various ports and wharves therein specified, and to pay therefor the sum of £330 per calendar month half-monthly and in advance, commencing on the day of delivery of the vessel to the charterers.

It was provided by the said charter that the charterers were "to have the option of cancelling this charter on expiry of first month on giving ten days' notice," and that they also were "to have the option of con-