the bankrupt. The trustee takes the estate *tantum et tale* as it stood in the person of the bankrupt, and the other creditors cannot complain that property is taken out of the sequestration which would not have fallen into it but for the fraud of the bankrupt. The passage in Bell's Comms. and the decisions in the cases of *Watt*, *Muir*, and *Eastgate* cited at the debate, amply support this proposition in law, which, so far as I know, has never really been controverted. The difficulty in all such cases is to prove that the contract was induced by fraud, but once this is established, a claim for rescission emerges, if it has not been barred by the conduct of the person defrauded or by rights having been meanwhile acquired by *bona fide* third parties.

The defender further pleaded that the pursuers' delay in asserting their rights, and the negotiations which they had with a view to taking a bill for their debt put them out of Court. This might have been so if they had been in knowledge of the fraud which had been practised upon them, but, so far as they were aware, the representation made by Miss Charlesworth might have been a perfectly honest one at the time when it was made. After they came to suspect the fraud there is no ground for maintaining that they were in *mora* in asserting their rights. On this matter, therefore, I am also against the defender.

I am accordingly of opinion that the judgment of the Sheriff-Substitute should be restored.

The LORD PRESIDENT, who was presiding at the advising, gave no opinion, not having heard the case.

LORD M'LAREN was absent.

The Court dismissed the appeal.

Counsel for Pursuers (Appellants)—Blackburn, K.C. — Macmillan. Agents — Carmichael & Miller, W.S.

Counsel for Defenders (Respondents)—Constable, K.C.—J. B. Young. Agents—Purves & Simpson, S.S.C.

Thursday, December 16.

FIRST DIVISION.

(SINGLE BILLS.)

CAMPBELL AND COWAN & COMPANY *v.* TRAIN.

Process — Sheriff — Appeal — Competency — Value of Cause — Conjunction of Two Causes ob contingentiam — Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, cap.* 51), *sec.* 7.

The Sheriff Courts (Scotland) Act 1907, section 7, enacts that causes not exceeding fifty pounds in value shall not be subject to review by the Court of Session.

A motor and a lorry collided. Separate actions were raised in the sheriff court at the instance of the driver of the lorry, and the proprietors of the lorry, against the proprietor of the motor, concluding for £25 and £50 respectively. These actions were on the motion of parties conjoined, and after a proof decree was given for £10 in the first action and £50 in the second. On appeal the Sheriff assoilzied the defender in the conjoined actions. The pursuers appealed. The defender objected to the competency of the appeal.

Held that the appeal was competent.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), section 7, enacts—"Subject to the provisions of this Act and of the Small Debt Acts all causes not exceeding fifty pounds in value exclusive of interest and expenses competent in the Sheriff Court shall be brought and followed forth in the Sheriff Court only, and shall not be subject to review by the Court of Session. . . ."

James Campbell, carter, 15 Williamson Street, Glasgow, raised an action in the Sheriff Court at Glasgow against John Train, building contractor, Burnside, Rutherglen, for damages laid at £25, in respect that on 25th October 1908, while he was leading a horse yoked to a lorry out of a gate at 400 Springfield Road, Glasgow, a motor car belonging to the defender collided with said horse and lorry and he sustained personal injuries owing to the fault and negligence of the driver of the motor, the defender's servant.

Messrs Cowan & Company, cartage contractors, the owners of the said horse and lorry, also raised an action in the same court against the same defender concluding for £50 as damages to the horse and lorry in the same accident.

The following narrative of the *facts* and *procedure* is taken from the opinion of the Lord President:—"The point raised in this case at this stage is one of competency. There was an accident owing to a collision between a motor and a lorry, and separate actions were raised at the instance of the driver of the lorry and the proprietors of the lorry, who were cartage contractors, against the proprietor of the motor. These actions concluded for £25 and £50 respectively, and were brought in the Sheriff Court. After the records had been closed a motion was made in the action concluding for £25—that is, Campbell's action—and an interlocutor was pronounced by the Sheriff-Substitute (Balfour) in these terms—'On the motion of parties remits this action to the action at the instance of Cowan & Company against the present defender for conjunction *ob contingentiam*.' Then in the other action, Cowan & Company's action for £50, this interlocutor was pronounced on the same day—'On the motion of parties conjoins herewith the action at the instance of James Campbell against the present defender, which has been remitted hereto of this date for conjunction *ob contingentiam*.'

The actions being thus conjoined, proof was taken and judgment was given in which, in the conjoined actions, £10 was decerned for to the pursuer of the first action, and £50 was decerned for to the pursuer of the second action. An appeal was taken to the Sheriff (MILLAR), who recalled this judgment and assoilzied the defender in the conjoined actions."

The pursuers appealed.

The defender, in Single Bills, objected to the competency of the appeal, and argued —The appeal was incompetent. Neither action concluded for more than £50. The Sheriff had privative jurisdiction—Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), section 7.

Argued for the pursuers (appellants)—The appeal was competent. The effect of conjoining two cases was that they became one case to all intents and purposes, and proceeded as such—*Thomson* v. *Edinburgh and District Tramways Company, Limited*, January 15, 1901, 3 F. 355, 38 S.L.R. 263; *Glasgow Feuing and Building Company, Limited* v. *Watson's Trustees*, May 18, 1887, 14 R. 718, 24 S.L.R. 512. The two actions could have been combined and brought as one action—*Mitchell* v. *Grierson*, January 13, 1894, 21 R. 367, 31 S.L.R. 301; *Dykes* v. *Merry & Cuninghame*, March 4, 1869, 7 Macph. 603, 6 S.L.R. 405; *Nelson, Donkin, & Company* v. *Browne and Others*, June 10, 1876, 3 R. 810, 13 S.L.R. 523; *North British Railway Company* v. *M'Arthur*, November 5, 1889, 17 R. 30, 27 S.L.R. 34. Reference was also made to *Hughes* v. *Allen*, 1909 S.C. 1210, 46 S.L.R. 813, and Dove Wilson, Sheriff Court Practice, p. 566.

At advising—

LORD PRESIDENT—[*After the narrative of facts and procedure above quoted*]—The question that is raised is that of competency, and the ground of the objection is that the action is within the privative jurisdiction of the Sheriff, which is now settled at £50. It seems to me that the answer is a very simple one—namely, that by the action of the parties themselves this action has been made an action in which the conclusions were not for £50 but were for £75, and in which the sum in the decree was not for £50 but was for £60. It is clear that the whole matter having arisen out of one accident, it would have been competent, according to our rules of pleading, for the parties to have conjoined their claims in one summons, making it, of course, clear in the conclusions of the summons the exact sum of damages sued for by each. That has been laid down again and again; and it seems to me that precisely the same thing has been done here by the conjoining of the two actions. Therefore I am clearly of opinion that the appeal is competent. There is no case precisely in point, but I think what was laid down in the case of *Nelson* in 3 R. at p. 810 really covers this case. I think, therefore, that the case must go to the roll.

LORD KINNEAR—I agree with your Lordship. I think it is settled in practice that when two cases are conjoined, they, as a consequence of that conjunction, become one case to all intents and purposes, so that every motion that is made to affect the party in one case must affect both alike. That is a rule laid down in the oldest books on practice, and I cannot find that it has ever been departed from. It is stated very clearly in Ivory's Forms of Process (vol. ii, p. 52), which is a book of authority. After pointing out the effect of remitting one case to another *ob contingentiam*, which leaves the two in their original condition as separate processes, he goes on to say that "when the different processes have thus been once brought before the same judge, and their connection is so intimate as to call for their being conjoined, they become blended, as it were, by this new step, into one single process. The whole procedure, therefore, is now strictly connected." Then he goes on to point out particular matters of detail in which they must be treated as one upon the grounds which he has already stated. I agree that the value of this conjoined case is not to be ascertained by looking at either of the actions separately, but by looking at the claims of each of the two pursuers in the joint action together. The amount which the defender was originally decerned to pay exceeded £50, and when he appealed to the Sheriff and the Sheriff recalled that interlocutor and assoilzied him altogether, the interest which the pursuers had in the joint action necessarily exceeded £50. I think this is a perfectly competent appeal.

The LORD PRESIDENT intimated that LORD DUNDAS, who was present at the hearing but absent at advising, concurred in the judgment.

LORD M'LAREN and LORD JOHNSTON were absent.

The Court repelled the objections to the competency and sent the case to the roll.

Counsel for the Pursuers and Appellants —Paton. Agents—Inglis, Orr, & Bruce, W.S.

Counsel for the Defender and Respondent —J. A. T. Robertson. Agents—Wishart & Sanderson, W.S.