their corporate capacity, to destroy the schools. Ultimately, from the various causes set forth in this article, the attendance at the burgh schools, which was small in the summer of 1870, ceased after the harvest of 1870. This, however, was not owing to any fault on the part of the complainer, who is a good and and efficient and well qualified teacher. Since the end of 1870, as previously, the complainer has had full possession of his house (viz., the said westmost house), as rector of the burgh schools, as well as of the salary appertaining to that office."

All that I can say of that explanation is, that it is altogether worthless and inadequate, and that the School Board were, in the circumstances, quite justified in pronouncing the sentence which they did.

But there is another point in this case, which involves the construction of certain clauses in the Education Act of 1872. The complainer says that he could not be ejected from his dwelling-house because the School Board have no title to that house. Now I doubt the competency of that objection, this being merely a petition for warrant to eject and remove, and not an action of removing. But without taking up that ground, I am of opinion that the objection is bad on its merits. No doubt the wording of the statute varies in the 23d and 24th sections. The 23d section provides:—"The parish and other schools which have been established and now exist in any parish under the recited acts, or any of them, together with teachers' houses and land attached thereto, shall be vested in and be under the management of the School Board of such parish, or, if situated in a burgh, then of the School Board of such burgh." Then in the 24th section it is provided:—"Every burgh school shall be vested in and be under the management of the School Board of the burgh in which the same is situated, from and after the election of such School Board," &c. Now, in the first of these sections the teacher's house is mentioned, and in the second it is not; but in both cases the term school undoubtedly means among other things the school buildings. In regard to parish schools, which depend upon a series of statutes, it is a statutory requirement that there shall be a teacher's house, and it is therefore natural that the 23d clause should distinctly say that the teacher's house as well as the school shall be vested in the School Board. In regard to burgh schools, however, the position of the teacher's house is different, for there is no statutory enactment that in the case of burgh schools a teacher's house should be provided at all. It is thus not surprising that there should be no express mention of the teacher's house in the 24th section.

But coming to the facts of the case which we are now considering, I observe that the school-house and the teacher's house are embraced in the same tenement. Now, from the nature of the case I think it obvious that they cannot be separated. The whole tenement is one which has been dedicated to one purpose from time immemorial. Taking a fair construction of the 24th section of the Act, I think that it does include a tenement of this description, and that the fact that part of the tenement is a teacher's house does not prevent the whole tenement falling under the description of 'school."

If there had been a separate and distinct schoolmaster's house, that would have been a different, and might have been a delicate, question. But where the schoolhouse and the teacher's house are one tenement and are not separable, I cannot but hold that the whole falls under the term school.

The other Judges concurred.

The Court adhered.

Counsel for the Complainers—Watson and Rhind. Agents—Ferguson & Junner, W.S.

Counsel for the Respondents—Dean of Faculty (Clark), and Lee. Agents—H. & H. Tod, W.S.

Thursday, July 9.

FIRST DIVISION.

[Lord Mure, Ordinary

LORD CLINTON *v.* GEORGE BROWN.

Feu-Contract—Property—Lease.

A feuar held under a feu-charter which proceeded on a feu-contract, in which the superior bound himself to give to each of the feuars in the village "patches of moor ground from time to time, to improve, rent free for the first nineteen years, and thereafter for nineteen years, or the lifetime of the feuar, as each feuar may incline, at such rent as the same may be valued at by two men mutually chosen;" and also, to give "patches of arable or improved land at an adequate rent, with access thereto."—*Held* that on the feuar's refusing to comply with the conditions of the superior, the latter was entitled to remove him from the arable ground, his right therein being not a right of property, but a mere leasehold right from year to year.

In 1796 the late Sir William Forbes, in order to form the village of New Pitsligo, held out certain inducements to intending feuars, and embodied them in a general feu-contract. *Inter alia*, he undertook—(1) to give each feuar in the village at the time he acquired his feu, patches of moor ground to improve, rent free for the first nineteen years, and thereafter for nineteen years or the lifetime of the feuar, at a rent to be fixed by valuators; and (2) to give each feuar "patches of arable or improved land at an adequate rent, with access thereto." This general feu-contract was referred to and embodied in a particular feu-charter, acquired in 1812 by Andrew Brown, who accordingly obtained lots of moorland and arable ground, and held them down to the date of his death in 1858. George Brown, his son, succeeded him, and entered to all that his father had held, in possession of which the landlord, Lord Clinton, as administrator-at-law of his son, offered to allow him to remain on certain terms and conditions, which Brown refused. Lord Clinton raised a process of removing in the Sheriff-Court, and obtained decree, which Brown sought to suspend, but the suspension was sisted in order to allow Lord Clinton to bring this action of declarator of his right.

The Lord Ordinary pronounced the following interlocutor:—

"12*th May* 1874.—The Lord Ordinary having heard parties' procurators, and considered the closed record, proof adduced, and whole process—

Finds, 1st, That the defender has not, in respect either of the titles founded on by him to the feu in the village of New Pitsligo, granted to the late Andrew Brown, mason in New Pitsligo, by Sir William Forbes in 1812, or of the contract dated the 1st of September 1796, entered into between Sir William Forbes and certain parties, as feuars, or intended feuars, in the said village, any right of property in any part of the estate of New Pitsligo other than the said feu: Finds, 2d, That the pursuer, as administrator-at-law for his son, the Honourable Charles John Stuart Forbes Trefusis, has the sole and exclusive right of property in the said estate of New Pitsligo, excepting the portions of ground forming parts thereof which have been given off in feu: Finds, 3d, That the defender has failed to establish that he possesses the portions of land on that part of the said estate called Turlundie, or on that part of the estate called Fraser's Farm, presently possessed by him, under any right either permanent or for a term of years, or under any other right or title than that of tenant from year to year, and that his tenancy of the said subjects has expired: Therefore finds and declares in terms of the first and second declaratory conclusions of the summons: But finds, 4th, That, in the event of the defender being removed from the portion of land presently possessed by him on Fraser's Farm, he will be entitled to demand that he shall be put in possession, in lieu thereof, of another portion of arable or improved land on the said estate, 'at an adequate rent, with access thereto,' in terms of the obligation to that effect undertaken by Sir William Forbes in the feu-contract of 1796; and to that extent and effect assoilzies the defender from the third declaratory conclusion of the summons, and decerns; and in the removing repels the defences, and decerns and ordains the defender to flit and remove from the whole of the said portions of land in terms of the conclusions to that effect; reserving to the defender, in the event of his being removed from the said lot of land on Fraser's farm, to enforce against the pursuer, as administrator-at-law for his son, in any competent process, his right to be put in possession of a lot of arable land, in terms of the obligation to that effect undertaken by Sir William Forbes in the feu-contract of 1796, as declared in the 4th of the above findings; and to the pursuer his defences as accords: Finds the pursuer entitled to expenses, subject to modification, of which appoints an account to be given in, and remits the same when lodged to the Auditor to tax and report.

"*Note.*—With reference to the grounds in law on which the Lord Ordinary has proceeded in pronouncing the prefixed interlocutor, he has little to add to the observations in the note to his interlocutor of the 18th of December 1872 in the suspension process. He is still of opinion, for the reasons there explained, that the portions of moorland and arable land of which, under the original contract of 1796, the respective feuars were to be put in possession, were by the provisions of that contract placed upon a different footing.

"(1) The patches of moor-ground were given in lease with a view to the improvement of the district at first for a definite period of nineteen years, and rent free, because during that first period they could not be expected to yield much return, and thereafter for a second nineteen years, or for the lifetime of the feuar, as such feuar might incline. Now, in the present case, according to the evidence of the defender, his father got the patches of moorland called Turlundy after the expiry of the first period on a liferent lease, and as that came to an end at his death in 1858, and no written title to the land has been produced, the defender must, it is thought, be held to have since then possessed it as tenant from year to year, and is now therefore no longer entitled to retain possession. For the defender has, in the opinion of the Lord Ordinary, failed to prove that after his father's death the terms upon which these moorland lots had been held were changed, and that they were then added to the arable land and permanently attached to the feu, as he contends the arable land is and has all along been. This, according to the defender's own evidence, was done at an adjustment of the various lots which took place in 1858; but there is not, it is thought, any sufficient corroboration of the defender's evidence in this respect. He was not present at any of the meetings of the committee who adjusted these matters with the ground-officer, and although present at the meeting when the committee was appointed, he appears to have no very distinct recollection of what then took place, and remembers nothing of its having been there stated, as has been proved by several even of his own witnesses, that the allotments to be then made were to be temporary for five, or in some instances ten, years at most. There was, moreover, no alteration then made in the boundaries of the moorland lots in question, and the belief or impression of the defender, to the effect that they were given over to him as an addition to and on the same terms as the arable lot, cannot, in the opinion of the Lord Ordinary, in the absence of all written evidence, be held to have placed them under any different tenure from that under which they were originally leased.

"(2) As regards the arable land on Fraser's farm, the evidence tends, in the opinion of the Lord Ordinary, to confirm the views expressed in his note on the suspension case, to the effect that the arable lots were not to be permanently attached to any particular feu, and that there was no obligation undertaken by the feu-contract to give the feuars possession permanently, or for any lengthened period, of any particular lot of that kind of land. The general evidence as to the manner in which the arable lots were dealt with goes to show that there were changes from time to time made as to the possession of them under arrangements between the feuars and the factor or ground-officer; and there is also written evidence that a considerable portion of the arable lots were at times held under separate leases. This was more particularly the case with regard to Fraser's farm, the missive of which, for a 19 years' lease from 1817 to 1836, was signed by the defender's father. As regards the lots of arable land upon some of the other portions of the estate, there are also missives of lease of a later date. But there is none of a later date relative to Fraser's farm; and as the defender's right appears to the Lord Ordinary to be in its nature one of tenancy, and he has not been able to show that there was any written renewal of the lease granted to his father after 1836, the possession which he and his father have since then had of this lot must, it is conceived, be held to have been that of tenant from year to year.

"(3) But while such is the view which the

Lord Ordinary has taken of the defender's right to insist upon retaining permanent possession of the arable land in question, he has come to the conclusion that there was an obligation undertaken by Sir William Forbes under the feu-contract of 1796, and which is binding on his representatives, to give such feuar the use of a lot of arable land along with his feu. That was distinctly held out in the provisions of the contract as an inducement to get people to take feus, and it is in evidence that with few exceptions the feuars have all along availed themselves of the right or privilege thus conferred on them. The defender's father must therefore, it is thought, be held to have contracted on the faith of this undertaking, and the feu-right bears expressly to be held under that among other privileges. In these circumstances, it appears to the Lord Ordinary that when the superior finds it necessary, under the arrangement made by him for the management of his estate, to remove a feuar from any particular lot, he is bound, in respect of the obligation undertaken by the feu-contract, to give the feuar so removed the use of another piece of arable land at an adequate rent, and that if he does not do so he is liable to an action under the contract to enforce that obligation. The Lord Ordinary has therefore assoilzied the defender from the third declaratory conclusion of the summons in so far as it relates to the arable land, as by it the pursuer seeks to have it declared that he is not under any such obligation.

"(4) It was contended on the part of the defender that he was entitled to hold possession of the arable land in question until another lot in an equally convenient situation was assigned to him. The Lord Ordinary has, however, not been able to see his way to the adoption of this plea. It appears from the statements on the Record that the main reason why the pursuer seeks to have the defender removed is that he declines to occupy the arable land under the same regulations as those under which some of the other feuars held their lots. But no evidence has been led to show that these regulations either were or were not of a description that the defender ought to have agreed to. It may be, however, that they were in themselves reasonable, and such as the defender was not fairly entitled to object to, and that the pursuer may not be able, under the present estate arrangements, to give the defender the use of another lot of arable land, with a proper access in a convenient locality, and in that view the defender's remedy may resolve substantially into a claim of damages for breach of contract, which cannot, it is thought, be enforced under the present action, The Lord Ordinary has therefore repelled the defences in the removing, as the defender has not, he conceives, any title to insist upon retaining possession of any portion of the land in question. But he has qualified the decerniture with a reservation which will keep open all right the defender may have to bring an action under the contract to enforce the obligation thereby undertaken relative to the arable land."

The pursuer reclaimed, and pleaded—"(1) On a sound construction of the said contract, dated 1st September 1796, it does not impose on the proprietor of New Pitsligo any obligation to allot lots of land to the feuars in the village except for the periods therein mentioned, and does not confer on the feuars any right of property in any such lots, or any right to possess them except for such periods. (2) On a sound construction of the said contract, it imposes no obligation on the proprietor to allot arable lots of land to the feuars of the village, or at least it does not impose on him any obligation to give the feuars more than a yearly tenancy of such lots, and it does not confer on the feuars any right to any such lots, or at least any higher right than that of yearly tenants. (3) The defender and his predecessor in said feu having had possession of said lots for greatly more than the periods specified in the said contract, the defender cannot maintain his right thereto, or his right to continue possession thereof, in virtue of the said contract. (4) The defender having no right of property in said subjects, and no title to possess or continue to possess the same, decree of declarator and removing falls to be pronounced in terms of the conclusions of the summons."

Argued for him—The defender's only written title was the feu-contract of 1796, and the only rights defined therein were the feu-rights and the right to the moor ground; the right to the arable ground was not defined, and was so indefinite that it did not import obligation. If there was any obligation in any sense at all, its letter and spirit were both fulfilled in giving the feuars arable ground until their moorland was improved. The presumption was, that if no term of endurance was mentioned for their occupancy, it was only for one year, though that might be extended by the equitable power of the Court.

Authorities—Stair, ii. 9, 15, 16; Ersk. ii. 6, 24; *Redpath*, M. 15,916; *Clark* v. *Lamond*, Jan. 27, 1816, Fac. Coll; Hunter, i. 456.

The defender pleaded—"(1) The complainer, in virtue of his titles and of the said feu-contract of 1796, and of the possession which has followed thereon, has good and undoubted right to possess the several lots of ground in question as pertinents of his feu, upon payment of an adequate rent therefor. (2) In any view, the pursuer is not entitled to remove the defender from the said lots of ground without assigning to him other lots of equal convenience. (3) The defender having a good title to maintain his possession of the said lots of ground, and the pursuer not being entitled to remove him therefrom, the defender should be assoilzied from the conclusions of the present action."

Argued for him—The question turned on the construction of the feu-contract of 1796. If no term of endurance was specified, perpetuity must be presumed.

At advising—

Lord President—The village of New Pitsligo is situated on the property of Charles Trefusis, son of the pursuer, who pursues this action as administrator-at-law for his son, and the defender is a feuar in the village. That feu was granted to the defender's father by Sir William Forbes of Pitsligo in 1812. The defender was till lately in possession of not only the subject of the feu, but also other pieces of ground in the neighbourhood.

There were two lots of ground on Turlundie, and one lot on Fraser's farm, but a summons of removing was brought for the purpose of removing the defender from all land except the feu, and in that summons the pursuer has obtained decree before the Sheriff. That decree was brought under suspension, and the Lord Ordinary on 18th December 1872 found the letters orderly pro-

eeded. The defender reclaimed, and after hearing counsel the Court sisted process to enable an action of declarator to be brought to try the question of right. That action was brought and has been disposed of by the Lord Ordinary, whose judgment is now under review. The object of the action is to establish that the defender has no right of property in any part of New Pitsligo except in the feu given in 1812, and "in particular, that Charles Trefusis is the sole and exclusive proprietor of the said lots of land on Fraser's farm or Slack of Menie, and on Turlundie, and that the pursuer, as his administrator-at-law, is entitled to the exclusive possession thereof, and to remove the defender therefrom; and further, it ought and should be found and declared, by decree foresaid that the pursuer, as administrator-at-law foresaid, is not bound to put the defender in possession of any other lot of land in lieu of any of the foresaid lots." The Lord Ordinary has decided in favour of the defender in regard to all the conclusions of the summons except the last, and in regard to that he has the following finding:—"But finds, 4th, That in the event of the defender being removed from the portion of land presently possessed by him on Fraser's farm, he will be entitled to demand that he shall be put in possession, in lieu thereof, of another portion of arable or improved land on the said estate, 'at an adequate rent, with access thereto,' in terms of the obligation to that effect undertaken by Sir William Forbes in the feu-contract of 1796; and to that extent and effect assoilzies the defender from the declaratory conclusion of the summons, and decerns."

The history of the village of New Pitsligo may be given in a few words. There was no village of New Pitsligo in existence at the end of last century, and the pursuer's ancestor, Sir William Forbes, was anxious that such a village should be founded, and for that purpose gave great encouragement to long leases by granting them on advantageous terms. The conditions on which people were entitled to take leases were embodied in a contract dated in 1796, and as that contract is referred to in the feu charter of 1812, the pursuer is entitled to found upon it, so far at least as imported into the feu charter. In the feu charter the feu is described as "All and Whole that feu in North Pitsligo, with the houses and others built thereon, measuring about twenty-one ells in front, and fifty-five ells backward, bounded on the south by a lane and the feu belonging to the heirs of William Ironside, on the west by the main street, on the north by a new street, and on the east by the feu and garden belonging to George Anderson, mason, all lying within the village and barony of New Pitsligo, and county of Aberdeen; together with the haill parts, privileges, and pertinents of the same, and with all the liberties and privileges contained in the foresaid contract," being the original contract, dated 1st September 1796,—"Subject always to the haill conditions, provisions, and limitations enumerated and expressed in the foresaid contract, and certain other regulations established on the 1st day of November 1803." Now the defender was not of course a party to the contract of 1796, but by the reference in the feu charter he is entitled to all the privileges and liberties therein contained. The contract of 1796 was made with persons taking long leases, and among other things Sir William Forbes "obliges himself and his aforesaids to be at the expense of making the streets of said village, each feuar or tenant making the path from their houses to the street, keeping the same and the street to the middle thereof in repair afterwards: The said Sir William Forbes further being at the expense of making the market-place, school and schoolmaster's house; and further to give each of the feuars or tenants of said village patches of moor-ground from time to time to improve, rent free for the first nineteen years, and thereafter for nineteen years or the lifetime of the feuar, as each feuar may incline, at such rent as the same may be valued at by two men mutually chosen: Sir William Forbes is also to give each feuar or tenant patches of arable or improved land at an adequate rent, with access thereto; and likewise to the feuars and tenants of the village liberty of casting peats in the nearest and most adjacent mosses for the use of their families, and drying their corns, without any restriction whatever as to quantity or number of fires, but allenarly casting them properly by the direction of a moss-grieve, to be appointed from time to time by the said Sir William Forbes and his foresaids, and without any other payment than sixpence sterling yearly for each feu to the moss grieve for his trouble, and in proportion for a larger or smaller feu."

Now it appears that the defender got two patches of moorland in lease to improve in the terms here set forth. First he held these under a lease of nineteen years, rent free, and next under a lease of nineteen years at a rent fixed by valuators. These two terms having expired, it is not now maintained that the defender has no further right under that part of the contract. But then there is the other clause about the arable land. The clause about the moorland is quite distinct and precise as to the sort of right to be given, and the endurance of it, but the clause about the arable land is of a totally different character. All that is said is, that Sir William Forbes is to give each feuar patches of arable or improved land at an adequate rent. The defender argued that this gave him a right of property. Such a right of property would be a very peculiar one, for the patches of land are to be held at an adequate rent, and that seems clearly to indicate that no right of property was given, but a right of leasehold of some sort. But there is no term of endurance of any lease specified, and no mode of fixing the rent, and in these particulars the clause dealing with the arable patches is in complete contrast to the clause dealing with the moorland. If in this case the feuar made a demand for arable land, I do not know in what shape he would put that demand. All that is promised to him is a patch of land at an adequate rent. Can such a promise be made the foundation of a right. If a person said to another, I will give you a farm at an adequate rent, would such a promise give a right enforceable by law. I think clearly not.

The construction of this clause derives light from what has actually happened. Sir William Forbes and his successors have never been unwilling to fulfil the provision as to arable land (and I presume that Lord Clinton and his son will not be unwilling to do so), if the manner in which it was carried out was left in their own discretion. And it is difficult to say that there is any right given to the feuars which they are entitled to enforce. So I think that the Lord Ordinary has gone wrong in regard to this point. In other respects I am of opinion that we should adhere to his judgment.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the reclaiming-note for the pursuer against Lord Mure's interlocutor, dated 12th May 1874, Recal the said interlocutor, repel the defences, and decern in terms of the whole conclusions of the libel; find no expenses due to or by either party."

Counsel for Pursuer—Dean of Faculty (Clark) Q.C., and Gloag. Agents—M'Kenzie & Kermack, W.S.

Counsel for Defender—Fraser and Mackintosh. Agents—J. B. Douglas & Smith, W.S.

Thursday, July 10.

FIRST DIVISION.

[Lord Young, Ordinary.

EHRENBACHER & CO. *v.* FREDERICK KENNEDY.

Sale—Fraud.

A foreign firm sold goods to a Scotch firm who were insolvent; the latter granted a bill in payment, and transferred the goods to one of their creditors, and shortly after were sequestrated,—the foreign firm ranking on the estate and receiving a first dividend. *Held* that the foreign firm had no ground of action against the creditor who received the goods, and that an allegation of fraud against him was irrelevant.

The pursuers in this case were hop growers and merchants, carrying on business at Nurnberg in Bavaria, and in Liverpool; and the defender, Frederick Kennedy, was a wholesale hop merchant in Edinburgh. The defender was also a partner of the firm of Thornton, Kennedy, & Hey, hop merchants in London. In or about September 1869 a firm of J. & W. Scott began business as hop and seed merchants at Greenside Place, Edinburgh. The firm consisted of two brothers, James and William Scott, and their business in the hop trade was the purchasing of hops wholesale, and retailing the same to country brewers, bakers, and small dealers. The defender Frederick Kennedy was upon intimate terms with the brothers Scott, and his firm of Thornton, Kennedy, & Hey was one of the wholesale houses from which the said J. & W. Scott were in use to purchase hops for re-sale. In or about the month of August 1872, the said firm of J. & W. Scott became insolvent. In the course of the month of August, and in the beginning of September following, they dishonoured several of their acceptances, among others an acceptance of theirs to Thornton, Kennedy, & Hey. It was further alleged by the pursuers that the defender Frederick Kennedy, and his firm, were well aware of the insolvent condition of the Scotts, and in consequence thereof had in the beginning of August 1872 stopped deliveries of hops under an existing contract with them.

The case for the pursuers was that Frederick Kennedy formed a fraudulent scheme to obtain payment or satisfaction of his firm's claim, by holding over his firm's dishonoured bills upon J. & W. Scott, and inducing others to do so, and appropriating towards satisfaction of his own firm's claims such goods, or the proceeds of such goods, as J. & W. Scott might be able to induce other traders, unaware of their insolvent condition, and of the dishonour of their bills, to sell to them. Accordingly, no proceedings were taken by the defender or his firm for the recovery of the amounts of said dishonoured bills, and the existence thereof was not in any way published; while, on the contrary, the defender represented J. & W. Scott as solvent. In September 1872 the pursuers received an order from the Scotts for a quantity of Bavarian hops of the value of about £500, which order was executed, and on the arrival of the hops the Scotts took delivery and transferred them to the defenders. The pursuers maintained that this transaction was fraudulent, and intended to satisfy in part the defender's unsatisfied claims against the Scotts, and they accordingly raised this action against the defenders for the price of the hops. The Scotts were sequestrated in April 1873, and the pursuers accepted a first dividend but refused a second.

The Lord Ordinary pronounced the following interlocutor:—

"14*th May* 1874.—The Lord Ordinary having heard counsel and considered the record, Finds that the pursuers' averments are irrelevant and insufficient in law to support the action: Therefore dismisses the action, and finds the pursuers liable in expenses, as the same shall be taxed, and decerns.

"*Note.*—The general aspect of this case is very unfavourable to the defender; but, on a careful consideration of the record, I am of opinion that the action cannot be maintained. The pursuers sold and delivered hops to J. & W. Scott. They allege that it was dishonest on the part of J. & W. Scott to order them, and to take delivery, instead of rejecting them when they arrived. But they nevertheless stood by the sale, and claimed the price in Scott's sequestration, and received a dividend, which, with respect to the bankrupt estate, is equivalent to payment. The trustee then raised action against the defender for the value of the hops, on the ground that he had obtained them from the bankrupts fraudulently, to the prejudice of the creditors, and recovered a sum of money (£260) on a compromise. The trustee, in admitting and paying a dividend on the pursuers' claim for the price, and in prosecuting the defender for the alleged fraud which he committed on the creditors with respect to the goods in question, necessarily proceeded on the footing that the sale and delivery by the pursuers were valid to divest them and to transfer the property to the bankrupts, and the pursuers having claimed the price and drawn a dividend cannot maintain the contrary either against the trustee or the defender, who satisfied the trustee's claim against him on that footing.

"The pursuers don't allege that the defender was a party to the sale by them to the Scotts, that he made any representation to them, or by any fraud or device induced them to sell or deliver the goods. A fraudulent intention on his part to obtain possession of any goods which the Scotts might be able to procure from sellers ignorant of their insolvency is imputed. But I think this insufficient to found an action. I do not omit to join it to the defender's subsequent conduct as averred, in acquiring the goods from the bankrupts, and in respect of which he was prosecuted by the trustee as for a fraud on the bankrupt estate. But I think the whole averments, taken together, are insufficient.

"I give no opinion upon a question which naturally occurs though not raised by this action, and is