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the law, and therefore receive a strict interpretation. What is not expressly prohibited, cannot be implied, however strong the language be, which is drawn from other parts of the deed, to support that implication. Where, therefore, an entailer has not inserted in his entail, a prohibition against selling, he must in law be presumed not to have intended his estate to be protected against sales. The present entail contains no prohibition against selling, and therefore cannot protect against sales; and the general words of prohibition against doing any "fact or deed prejudicial to "the succeeding heir's" rights, are not in law sufficient to prevent a sale of the estate.

After hearing counsel, it was

Ordered and adjudged that the interlocutor complained of be affirmed.

For Appellant, *C. Yorke, R. Macintosh.*

For Respondents, *Al. Wedderburn.*

JOHN CATHCART of London, Merchant, - *Appellant;*
ALEXANDER BLACKWOOD, Merchant, Edinburgh, *Respondent.*

House of Lords, 26*th February* 1765.

BANKRUPTCY—FOREIGN—CERTIFICATE AND DISCHARGE.—A company in London became bankrupt, and, under the bankruptcy, obtained a certificate and discharge. Some years thereafter an action was raised by a creditor who had ranked and obtained his dividend out of the estate for payment of his debt, against the surviving partner in Scotland: Held that the discharge and certificate protected him, in terms of the 5 Geo. II. c. 30, § 70; and that concealment of property in Scotland, which did not then belong to him, was no bar to the benefit of the act.

IN the year 1726, the appellant, John Cathcart, entered into partnership with John Blackwood of London, brother to the respondent, in a foreign shipping trade, which, from various causes, proving unfortunate, the company was obliged to become bankrupt in August 1745, and a fiat of bankruptcy issued in England. When this event happened, the appellant had no personal effects whatever to hand over to his creditors, under the commission of bankruptcy, except his half-pay.

Thereafter, having conformed in all respects to the provisions of the bankrupt statute, the company procured the Lord Chancellor's certificate and discharge.

The appellant, out of honourable feelings, and notwithstanding the certificate and discharge, and the dissolution of the company, had, from time to time, paid several of the company debts, arising out of the savings from his half-pay, and his own industry. In this way he had paid, from the date of the certificate to the 7th December 1758, £2479.

The respondent was creditor of the company, and had ranked on the estate, and received his dividends. The appellant would have paid his claim also, had he found it consistent with other preferable demands. It was consequently left to be paid by his partner, John Blackwood, the respondent's brother; but, in the hope of enforcing payment of his claims, the respondent raised the present action.

In defence, the appellant pleaded the certificate of bankruptcy, obtained and allowed by the Lord Chancellor, and the statutes of England, in bar of the action, and, in particular, 5 Geo. II. cap. 30, § 7, whereby it is enacted,—"That "all bankrupts, who shall surrender and conform, as by that "act directed, should not only be entitled to the allowances "out of the neat produce of the estate, as therein mention-"ed; but shall be discharged from all debts owing at the "time that such persons did become bankrupt; and, in "case such bankrupt shall afterwards be impleaded for any "debt due before he became bankrupt, such bankrupt may "plead in general, that the cause of action did accrue be-"fore the time he became bankrupt, and the certificate of "such bankrupt's conforming, and the allowance thereof by "the Lord Chancellor, shall be sufficient evidence, prece-"dent to the obtaining such certificate, unless the plaintiff "can prove the said certificate was obtained unfairly, or "make appear any concealment by such bankrupt to the "value of ten pounds."

In answer, the respondent pleaded the exception of the statute as to concealment of estate, and offered to prove the appellant's ownership of lands in Ayrshire, and a house in Edinburgh, at the time of his bankruptcy. The appellant replied that these, at the time of his bankruptcy, did not belong to him, but to his father, and were enjoyed by him in fee simple,—and that at the time of his bankruptcy, he had

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made a full disclosure of his probable eventual interest in these lands, which were only £10 of yearly rent.

Proof being allowed of the value of the farm called Glendusk, being the lands alluded to, it was established, that at the time of the surrender, the farm was let at £9. 3s. 4d. yearly rent.—That he had never made up titles to the house in Edinburgh,—never intromitted with the rents, but that these had been uplifted by an agent after his father's death, to pay his father's debts, and afterwards by his sister, and others for her behoof.—That when sold, the house in Edinburgh would not yield more than £50.

On this proof, the Lord Ordinary pronounced this interlocutor:—"Having considered the state of the process, af-
July 7, 1761. "fidavit of John Blackwood, which the pursuer (respondent) "agrees shall have the same effect as if it had been regu-"larly emitted on oath, on a commission from this court, "and having also considered the opinions of counsel learned "in the law of England, produced for both parties, with the "list of debts alleged by the defender (appellant), and not "denied by the pursuer to have been paid by the de-"fender since his bankruptcy, and whole other circum-"stances of the case; finds it *not* proved that the defender "has been guilty of any such fraudulent concealment as is "sufficient to deprive him of the benefit of the certificate "granted by the commissioners, and confirmed by the Lord "Chancellor; and, therefore, sustains the defence founded "on the said certificate, assoilzies the defender, and de-"cerns."

On representation, the Lord Ordinary made avizandum with the cause to the Inner House; and, upon advising the
Nov. 17, 1762. case, their Lordships, of this date, "repelled the defence "founded upon the Lord Chancellor's certificate, and de-
July 22, 1763. "cern." On reclaiming petition, the Court adhered.

Against these interlocutors the present appeal was brought to the House of Lords.

Pleaded for the Appellant.—In every fraudulent concealment, the bankrupt must have two things in view, 1*st*, to conceal a fund, which, if discovered, could be attached by his creditors; and, 2*d*, to derive profit by such concealment to himself. Without a prospect of both these, it is impossible to see an object in the concealment, or any fraud as its ultimate end. Neither of these was, in the nature of things, applicable to the present case. Personal effects may be con-

cealed, but lands and tenements could not. But it was shewn, from the whole conduct of the appellant towards the company creditors,—a conduct highly honourable to him,—both before and after the bankruptcy, that he could have no intentions of concealing any thing from them, but, on the contrary, had manifested an honest desire to pay every one, as was evident, by his paying several claims after obtaining his certificate; as also, his bringing under the creditors' notice the existence of the lands in Scotland. Accordingly, in regard to the lands of Glendusk, he had made a full disclosure of his interest in these on his judicial examination, stating that these lands belonged to his father, were worth £10 of yearly rent; and were adjudged for a bond to an amount equal to the value thereof; and, in regard to the house in Edinburgh, the reason why no disclosure was made of this was, that at this time it belonged to his father, and his sister being then alive, and behoved to be provided for after his father's death, she was allowed to uplift the rents.

Pleaded for the Respondent.—The 7th sec. of 5 Geo. II. does not require the concealment to be fraudulent, for the purpose of voiding the certificate, and enabling the plaintiff to recover his debt; every concealment to the value of £10, whether arising from negligence, inattention, or misunderstanding the nature of the interest concealed, is equally within the act.—The appellant having been guilty of concealment, beyond the value of £10, in two instances, is not entitled to plead the benefit of the act, in bar of the present action.

After hearing counsel, it was

Ordered and adjudged, that the interlocutors of the Lords of Session, of the 17th of November 1762, and 22d of July 1763, complained of in the appeal, be *reversed*; and it is further ordered, that the interlocutor of the Lord Ordinary of the 7th July 1761 be, and the same is hereby affirmed.

For Appellant, *Tho. Miller*, *C. Yorke.*
For Respondent, *Fl. Norton*, *Al. Forrester.*

Note.—The grounds upon which this reversal proceeded, rest on the effect due to the Lord Chancellor's certificate, which, as a decree of a supreme Court, must have effect given to it in all other courts, without entering into its merits. It also appeared that the omission was accidental. In the subsequent case of Watson *v.* Renton, 5th

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March 1791, (Bell's Cases, 93), Lord Justice Clerk Macqueen explains this doctrine, and the effect due to the Lord Chancellor's certificate, in these terms :—" The Chancellor's certificate is as effectual a discharge as payment is with respect to all debts due by an Englishman living in England. The creditor cannot attach a debtor who has such a certificate in England ; must not we also protect him ? I have a *res judicata* in England, freeing me from a demand ; I come to Scotland, can I be taken up there on an action upon the same ground ? No." A *res judicata* is good all the world over ; the courts have no right to review this final judgment. On the other hand, if I want execution on an English decree, the other party cannot defend himself against it, otherwise than by shewing that the decree is unjust by the law of England. If the decree be liable to review, it must be reviewed in England ; if there be a judgment in the last resort, it can go no further. A man cannot be forced to go through every country in Europe with his defence."— There is a short notice of this case, M. 4579.

HIS MAJESTY'S ADVOCATE - - - *Appellant ;*
ARCHIBALD DOUGLAS of Douglas - - *Respondent.*

House of Lords, *4th March* 1765.

PATRONAGE—RIGHT OF PRESENTATION.—Circumstances in which held that the Crown was divested of the right of patronage, although in the orginal titles in favour of the party the words of the grant were general and not special, and although the exercise or possession of the right was not always enjoyed by him, but sometimes by the Crown, as coming in place of the Bishop.

THE united parish of Buncle and Preston became vacant in 1761 ; and a question arose between the respondent and the crown, as to which of them had the right of patronage, and of presenting the minister to the vacant benefice. The respondent brought an action of declarator against the Officers of State, to have it found that he had right, in virtue of a charter granted in 1547, by Queen Mary, to his ancestor Archibald Earl of Angus, which was ratified in parliament in 1567, and granted to him and his heirs therein named, the several lordships and baronies therein mentioned, and *inter alia* " Terras Dominium et Baroniam de Buncle et Pres-
" ton, cum omnibus et singulis annexis, connexis, partibus,
" pendiculis, tenen. tenan. libere teneu. servitiis, molendinis,
" multuris, silvis, piscariis, *Advocatione et Donatione Eccle-*