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act 1685, is effectual, in any question among the heirs of entail, and will bar all gratuitous deeds, to the prejudice of the subsequent heirs; but the question here is, Whether such an entail is effectual against singular sucessors, or purchasers for a valuable consideration? In the present case, the act as to recording has been sufficiently complied with, by recording the charter which proceeds upon the entail, and which contains the names of the maker, the heirs of entail, and the description of the lands, and the whole limitations. This ought to be held a sufficient recording, to protect the estate against singular successors. But even if it were otherwise, the entail here having been executed antecedent to the act, that statute regulating registration did not apply.

Pleaded for the Respondents.—It has been finally settled, that the act 1685, as to the registration of entails, applies to those before, as well as those executed after the passing of the act, whether perfected by charter or not. Therefore, not less than the most literal compliance with the requisites of the act can support the restraints imposed by entails.

After hearing counsel, it was

Ordered and adjudged that the interlocutors be affirmed.

For Appellant, *Al. Wedderburn, W. Johnstone.*
For Respondents, *C. Yorke, R. Mackintosh.*

[M. 15,516, et Fac. Col. iii. 359.]

JOHN YOUNG of Newhall, Esq., - - *Appellant;*

MARGARET, the widow of John Scot Nisbet of Craigentinny, Esq., deceased; CHAMBRE LEWIS, Esq., and THOMAS TOD, Disponees of the said John Scott Nisbet, - } *Respondents.*

House of Lords, 21*st February* 1765.

ENTAILS—GENERAL CLAUSE—PROHIBITIONS AGAINST SALES.—An entail contained a general clause, prohibiting the heirs from doing any fact or deed in prejudice of the succeeding heirs of entail, but no special prohibition against sales: Held the general clause not sufficient to protect against sales.

IN 1722, the deceased William Nisbet of Dirleton executed an entail, containing strict prohibitory, irritant, and re-

solutive clauses. It declared, "That it shall be no ways "leisome or lawful to any of the said heirs male or female "to do any facts or deeds in prejudice of the other heirs, "their rights of succession; and which facts and deeds, all "and each of them shall not only be void and null, in so far "as concerns the said lands, so as the same shall not be "therewith affected or burdened, but likewise the contra-"veners shall forfeit and omit their right and interest in the "said lands, and the same shall devolve, pertain, and belong "to the next heir, in the order of the above destination."

The entail was duly recorded.

By failure of nearer heirs, the estate opened to John Scot Nisbet of Craigintinny, second son of Sir John Scot of Ancrum, by Christian Nisbet, the granter's eldest daughter; and having entered into a contract of sale of the estate with the appellant, the question was, whether the entail protected the estate against a sale?

The Court of Session held that the entail did not protect against sales. Nov. 17, 1763.

Against this interlocutor the present appeal was brought.

Pleaded by the Appellant.—It appears from the numerous series of heirs called to the succession, and especially from the clauses whereby the heirs female are obliged to assume the name and arms of Nisbet, as well as from the power reserved to himself, without the consent of his next heir, or any other heir of entail, not only that it was his intention, but that he understood he had actually prohibited the sale or alienation of his estate, by the words which he has used. Undoubtedly the entailer attached such meaning to the following words: "That it shall not be lawful to any "of the said heirs male or female to do any facts or deeds "in prejudice of the other heirs, their rights of succession;" and this being the case, and this clause being general and comprehensive in its terms, it makes no difference in law or reason, whether every particular act prohibited be expressly enumerated or not, if by the obvious sense and meaning of that clause, sales be clearly and distinctly prohibited. Hence there can be no doubt of the will of the granter; and where it is so clear as in the present case, it ought to form the rule, as it does in every other case, in regard to the construction of a settlement.

Pleaded for the Respondents.—The intention of the entailer can have no place in the construction of entails, which, imposing unjust restraints on property, are no favourites of

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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.