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 ANDERSON  
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The appellant's right of fishing, as bounded and described in Archibald Wood's charter of 1588, conveys only such a right of fishing upon these sands, as belonged to the lands granted by that charter, and therefore is not exclusive of the respondent's right to a salmon fishing, upon a very small part of these sands, opposite to the estate of Scotstoun and Mauchrie. If the charter of Archibald Wood imply a conveyance of salmon fishing over the whole sands of St. Cyrus, from Priest-rodfoot to Mauchrie burn, then it was a grant which was beyond the power of Archibald Wood to make, because the fishings opposite to Scotstoun and Mauchrie, which actually form a part of the sands of St. Cyrus, within the limits specified, were already in possession of Sir Thomas Erskine. The respondent's title, therefore, as derived from Sir Thomas Erskine, who held the lands of Mauchrie and Scotstoun from the Abbey of Lindores, prior to 1543; is a proper title to the salmon fishing, within the bounds of the lands thereby conveyed; and the Abbey then being superior of the lands, just as the king is now superior, the respondent's derivative right is as good as the appellant's—is clearly prior to his, and is besides fortified by prescriptive possession, and ought therefore to be preferred.

After hearing counsel, it was

Ordered and adjudged, that the interlocutors complained of be affirmed, with £100 of costs.

For Appellant, *Al. Forrester, Al. Wedderburn.*

For Respondent, *C. Yorke, Fred. Campbell.*

Not reported in Court of Session.

ROBERT ANDERSON, Mason, -

*Appellant;*

JAMES ANDERSON, late of Crookhill,

*Respondent.*

House of Lords, 26th Feb. 1759.

SALE—SECURITY FOR PRICE.—Circumstances in which held, where a purchaser did not find satisfactory security for payment of the price within the time specified in the minute of sale, though cautioners were offered, but rejected as insufficient, the seller was entitled to sell the property to another.

THE lands of Crookhill, belonging to the respondent, were burdened with debt to such an extent as to compel a sale

on the part of the creditors. The respondent proposed to the creditors to sell the estate, and pay them the amount of their debts, on condition of their compounding part of their claims. This proposal being acceded to by them, he entered into a minute of sale and agreement with the appellant, whereby the latter was to purchase the lands, to pay a certain price therefor, at specified periods, and to grant two sufficient securities for the payment of the price, “*within ten days after the sale.*”

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The appellant failed to produce cautioners satisfactory to the seller and his creditors; the consequence was, that letters of horning on the minute of sale and agreement were taken out, and he was charged to implement his agreement. This produced no result, and the respondent being pressed by his creditors, the estate was again exposed, and sold of new to Robert Pollock, who became bound to pay all the debts of the creditors. Pollock was infest, entered into possession, and paid all the debts and encumbrances. Whereupon the appellant raised letters of horning on the first sale, to charge the respondent to perform his part of the agreement of the sale of the estate to him. The present suspension was then brought before the Court of Session.

After various procedure, and proof led as to the circumstances of the appellant, and the cautioners offered by him, the Court ultimately pronounced this interlocutor:—“*Hav-* June 29, 1757.  
“*ing again advised this petition, with the answers and proofs*  
“*adduced in consequence of their interlocutor of the 4th*  
“*December 1755, they find that the charger (appellant) not*  
“*having implemented his part of the minute of sale, by pay-*  
“*ment of the sums thereby stipulated, or finding caution in*  
“*terms thereof, the suspender was at liberty to enter into*  
“*the second bargain with Bailie Robert Pollock, and there-*  
“*fore suspends the letters simpliciter, and decern with ex-*  
“*penses.*”

On reclaiming petition the Lords unanimously adhered. July 12, 1757.

Against these interlocutors the present appeal was brought. Aug. 10, —

*Pleaded for the Appellant*:—Having obtained a decree reducing and setting aside the second purchase, he was *in titulo* to insist for performance of the first agreement with his brother, James Anderson; and this decree, though one by default, and obtained in absence of the defender’s counsel, was good to sustain the title. The cautioners offered by him ought not to have been rejected, as they were of good and unexceptionable credit for the sums referred to, which

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was proved by some of the witnesses adduced, who deponed that they were good to the extent of £100 sterling. He was not bound to find caution to the satisfaction of Bogstoun and Mr. Wotherspoon the creditors, but to his brother alone, who was the seller. But even in regard to the creditors, they had agreed, by minute of agreement immediately after the sale, upon his paying the price, to deliver him a full discharge of all debts due by him to them absolutely and unconditionally. And there is little doubt, had it not been for the interference of these parties, the whole matter would have been arranged, as agreed in the minute of sale.

*Pleaded for the Respondent*:—In judicial sales, and in all private voluntary sales of lands, the constant practice is to hold the purchaser bound to find security for payment of the price within a short limited time after the sale, in order to secure the seller and his creditors from any disappointment. And in all such cases, it has never been doubted that the purchaser forfeits his purchase, and the seller is again at liberty to sell the estate, unless satisfactory sureties are offered, within the time expressly prescribed. This is the more necessary and imperative where, as in this case, the avowed purpose of the sale was, to discharge encumbrances, and to relieve the respondent from the pressure of debts. And it was a fact, beyond all dispute, that both the cautioners offered by Robert Anderson were at the time utterly insufficient, one of them having soon thereafter fled the country for debt, and the other in bad circumstances.

The appellant applied to the House of Lords, by petition, for further time to prepare his cause, but it was rejected.

Thereafter counsel appearing for the said respondent; but none appearing for the appellant: and the respondent's counsel having prayed an affirmance of the several interlocutors complained of with costs: it was ordered and adjudged that the interlocutors therein complained of be affirmed, with £20 costs.

For the Respondent, *Rob. Dundas, C. Yorke.*

Unreported in Court of Session.