

No 13.

But further, the *beneficium deliberandi*, in this case, must be considered as expired, the action being brought at the distance of 47 years from the predecessor's death, and when the right to the subject had long stood vested in a third party.

Answered for the pursuer; Nothing less than the production of an absolute right, totally denuding the pursuer's predecessors, could afford a defence against a full exhibition, to the extent called for by the pursuer. This is established by the authorities on which the defender founds. But the title produced by the defender does not amount to a right of this kind. It is nothing more than a charter of adjudication, which can give no better right to the lands than the adjudications on which it is founded. These adjudications, therefore, are the only titles on which the defender can pretend to hold the lands; but, as they are not secured by a declarator of expiry of the legal, they can give no such absolute right to the property, as the law requires, to bar this action. They may have been extinguished by intromissions within the legal, and subject to a variety of other objections. Accordingly, it was found by the Court, that the production of apprisings, though the legals were expired, were not sufficient to exclude an exhibition *ad deliberandum*, at the instance of the heir; Steel, January 12. 1665, Gilmour, No 19. p. 3997.; Lady Fintray, January 1685, No 24. p. 4000.

Replied for the defender; In the case of Steel, 1665, the apprisings were not completed by charter and infeftment. In the other decision of Lady Fintray, 1685, the question was with regard to an expired apprising against the brother of the pursuer. And the judgment of the Court contained this explanation, 'unless the comprising had been led against the brother, as heir, or lawfully charged to enter heir to his predecessors.'

THE COURT 'ordained George Buchanan to produce the adjudication in his person, with the grounds thereof, and conveyances thereto, and also the factory in virtue of which he uplifted the rents of Wester Auchendinnan.'

Lord Ordinary, *Braxfield*. Act. *Baillie*. Alt. *Ilay Campbell*. Clerk, *Menzies*.
Fol. Dic. v. 3. p. 196. Fac. Col. No 50. p. 89.

1787. January 19. JOHN ADAIR against ROBINA and JEAN ADAIRS.

No 14.
 Exhibition *ad
 deliberandum*,
 competent on
 the title of
 apparenny in
 an heir-male.

JOHN ADAIR, as heir-male to his brother, insisted in an action of exhibition *ad deliberandum*, against Robina and Jean Adairs, his nieces, who had been served heirs of line to their father; alleging, in general, that the lands which belonged to the deceased had been devised to heirs-male.

Pleaded for the defenders: In order to warrant such an action as the present, some writing or deed must be produced, or particularly condescended on, whereby

the heirs-general have been excluded, and those of a different description brought into their place. Unless there is probable ground for supposing that a deviation from the ordinary rules of inheritance has occurred, it is only competent to the heirs of line. Erskine, book 3. tit. 8. § 51.

Answered; The *jus sanguinis*, or the relation to the ancestor, in any of the characters recognised by law, whether as heir of line, of conquest, or heir-male, is alone a sufficient title for carrying on an action of exhibition *ad deliberandum*. If it were farther necessary, to produce some writing, devising the estate to the particular order of heirs, or even to describe it in a special manner, this form of law, introduced in favour of apparent heirs of every denomination, might be altogether frustrated; because the persons against whom the action is brought may be possessed of all those documents which regulate the succession. Stair, iv. 33.; Bankton, vol. 2. p. 324.; Erskine, book 3. tit. 8. § 56.

THE LORD ORDINARY found, 'That the pursuer had no title to insist in the action, in respect he had neither produced nor condescended on any writing or deed devising the estate to heirs-male.'

After advising a reclaiming petition, with answers, 'the LORDS altered the interlocutor of the Lord Ordinary, and remitted the cause to his Lordship to proceed accordingly.'

Lord Ordinary, *Swinton*. Act. *Geo. Wallace*. Alt. *Geo. Fergusson*. Clerk, *Home*.
Fol. *Dic. v. 3. p. 196*. Fac. *Col. No 300. p. 464*.

1795. February 4. SIR ANDREW CATHCART against The EARL of CASSILIS.

DAVID Earl of Cassilis executed an entail of his estates of Culzean and others, in favour of himself and his heirs-male.

On his Lordship's death in 1792, Archibald Earl of Cassilis being the next heir called in the entail, got possession of the estates conveyed by it, with the title-deeds, which last, it as usual assigned to the heirs of tailzie. His Lordship, soon after, took infeftment on the entail, and put it upon record.

Sir Andrew Cathcart was one of the heirs-apparent of line to Earl David, and also (as he alleged) heir of provision in part of the lands entailed by him, of which, in consequence of certain destinations made by his Lordship's predecessor, Sir Andrew contended, that he could not be disappointed by the entail, which was gratuitous.

Sir Andrew, in these characters, brought an action against Earl Archibald, concluding for exhibition *ad deliberandum*, of all the writings in his possession relative to those lands, to which he alleged he had right as heir of provision.

In defence, Lord Cassilis

Pleaded; Earl David's entail followed by infeftment, is *ex facie* a complete title for vesting the property of the whole lands and title-deeds in the defend-

No 14.

No 15.

The right of the heir of line, or of former investitures, to bring an exhibition *ad deliberandum*, found to be cut off by an entail made by his predecessor, in favour of the heir-male.