

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.

No 15. er, and until it be set aside in a regular action of reduction, the pursuer, in neither of the characters to which he lays claim, can have any title or interest to insist in this action; Erskine, b. 3. tit. 8. § 56; Harcarse, March 1683, Lady Yester against Lord Lauderdale, No 23. p. 3999. Its proper object is to enable the heir to deliberate whether he should enter, but there can be no occasion for such deliberation, where, as in this case, there is no estate to which he can enter.

Answered; The deed of a predecessor, in order to deprive an heir-apparent of the privilege of pursuing an exhibition *ad deliberandum*, must be onerous, must be followed with infestment, and must have completely denuded the granter; Stair, b. 3. tit. 5. § 1.; b. 4. tit. 33. § 4. 6.; Harcarse, No 482, No 23. p. 3999; 483, No 6. p. 3985.; and 484, No 25. p. 4000.; Erskine, b. 3. tit. 8. § 56; Madowall, b. 3. tit. 5. § 7; Kames, 30th November 1756, Heron against Herons, No 37. p. 4019.; Fac. Col. 12th January 1779, Macfarlanes against Buchanan, No 13. p. 3991.; 8th August 1783, Lady Mary Campbell against Earl of Crawford, No 15. p. 3973.; whereas the entail in question was not only gratuitous, but at Earl David's death was an undelivered personal deed, which he might have revoked at pleasure.

Replied; None of the authorities referred to support the plea of the pursuer; most of them indeed relate entirely to the question, What writings an heir, whose title is undisputed, is entitled to call for?

THE LORD ORDINARY 'assoilzied the defender.'

On advising a reclaiming petition, with answers, it was

Observed on the Bench; The deed of the late Lord Cassilis clearly excludes the present action. This point was determined both in the case of Duke Hamilton against Douglas, 28th November 1761, No 12. p. 3966.; and in that of Hamilton of Dalzell against Miss Hamilton of Rosehall in 1756, (not reported). The pursuer's object here is, not to get inspection of writs, in order to deliberate about entering, but to discover whether there are grounds for setting aside Earl David's entail. But for this purpose, he must make up titles, and bring a regular process of reduction and declarator, in which, after specially condescending on the papers wanted, he will be allowed a diligence for recovering them.

THE COURT unanimously 'adhered.'

Lord Ordinary, *Craig*.

Act. Geo. *Fergusson*.
Clerk, *Home*.

Alt. Dean of Faculty *Erskine, Rolland*.

R. D.

Fol. Dic. v. 3. p. 197. Fac. Col. No 154. p. 352.